

Citation: *R. v. McGinty*, 2005 YKTC 83

Date: 20050914
Docket: 05-00178E
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Worship Justice of the Peace Cameron

REGINA

v.

GORDON RICHARD McGINTY

Appearances:

Noel Sinclair

Lynn MacDiarmid

Counsel for the Crown

Counsel for the Defence

REASONS FOR SENTENCE

[1] CAMERON T.C.J.P. (Oral): Mr. McGinty has pled guilty to one count under s. 733.1 of the *Criminal Code*.

THE FACTS BEFORE THE COURT

[2] On September 6, 2005, police were attending the complaint of partying going on in one of the local hotels at a specific room. When the police attended, the noise had seemed to subside. They attended to check the room out. It turned out the room was one that was rented in the name of the accused, Mr. McGinty. Mr. McGinty returned to the room as the police were there and was clearly in an intoxicated state. He admitted to having had three or four beer. His blood alcohol level reading was 248. He has now been in custody for nine days.

[3] Mr. McGinty has a record that is significant. Crown is seeking a further 45 days and collapse of his intermittent sentence. The probation order that he was on at the time of breaching the abstain condition was one attached to an intermittent sentence.

[4] Mr. McGinty appears to be a young man who is trying to make some changes in his life. He had been enrolled in college, was to start last Monday. He has also indicated, through his counsel that he admits to being an alcoholic. He is hoping to be allowed to continue on with his college program.

[5] Mr. McGinty, here is the problem that you have: I am certainly not unmoved by your statement today, I believe you to be sincere in that statement, and it is perhaps the first light I have seen at the end of a long tunnel that you have been pursuing in and out of this particular Court, and perhaps others. However, your record is such that here is what the real problem is: It is good to hear that you have finally admitted you are an alcoholic. That is step one in a very long process of recovery, a life-long process. But your record shows that your alcoholism, until it is treated and substantially under control, puts many people in very significant danger. It may be your anger problems, I do not know what all it is, but your record shows a significant amount of violence on it and, of course, it shows a significant amount of problems with complying with court orders.

[6] I would like very much to see you go on to college and university and get out of the system, but the problem is that going to college, going to university, all of those things do nothing to treat your alcoholism. So now that you have taken step one, you have to follow through with the immediate steps, which are that your focus should be on

treatment for your alcoholism; get that under control, then pursue the education. Because part and parcel of your alcoholism is that it has become a major part of your life and helps you cope with all manner of things in your life, including stress, and furthering your education is a stressful endeavour. So until your alcoholism has been treated and you are able to control it and maintain sobriety, it is going to continue to drag you down.

[7] What I propose to do here today is a combination. Had you not made the statement you made in a manner that I, as I say, could believe was sincere, I would have agreed entirely with the Crown. The Crown was right on line. But your statement has allowed me to believe that I should give you a chance, but not quite as much a chance as you think you are entitled to. I propose to deal with it in this way: For the s. 733 offence, I am going to impose 45 days of jail, less the nine days that you have been in custody, at the normal factor of 1.5 to 1, which I will allow it to be 14 days. So you will be given 14 days credit for that. That leaves 31 days for you to serve at Whitehorse Correctional Centre ("WCC"). That is to be consecutive to the sentence that you are already serving. I am going to direct, however, that after that 31 days, you be released to continue serving the remainder of your intermittent sentence.

[8] Now, there are a couple of things I want you to understand. I believe that if you wish to pursue counselling for alcohol, you can do so while at WCC, as well as starting college courses. You can get the indications there through them. So it is not that you should be losing all that time; it should not be dead time. It will be dead time if you choose not to do anything, but there are lots of things you can choose to do, so it is not dead time. And it will, hopefully, help to dry you out, because three or four beers do not

equate to a 248 reading, 248 reading equates to alcoholism, and clearly an alcoholic who is continuing to drink.

[9] I am hoping the 31 days will help you dry out a little bit. I am hoping that you will, in that 31 days, spend time connecting in a meaningful way with Alcoholic and Drug Services and, of course, continuing to pursue your college preparation. The chance you are going to get is that after those 31 days, you will be able to carry on at the regular college; however, you are also going to be fully accessible to your friends, who drink and party and celebrate, and until you get a grip on that and realize that that is not something you can partake in, you will be back here. But this is your chance. Do not come back here asking for another chance.

[10] You have to do what you told me you want to do, and that is changing your life. You have some significant things to do and I have no doubt that you are a smart individual and can do it. The first thing you have to do is get your alcohol consumption under control. It doesn't mean a slip once a week because, in my view, that is not a slip; you are still drinking. Alcoholism does not mean you drink every day necessarily, it means you cannot handle alcohol, so if you drink once a year and you cannot handle it, you have a problem.

[11] So whether it is AA or whatever it is that is going to start getting you the help you need to control that, that is what you need to really focus on, accessing anything you can through WCC to assist you in starting to give you some controls over that, and then follow through when you are released, because there is lots of help and support on the outside as well.

[12] Victim fine surcharge will be waived on all counts -- there is only one count, so it is waived on that count.

CAMERON, T.C.J.P.