

Citation: *R. v. Pearson*, 2006 YKTC 109

Date: 20061103
Docket: T.C. 05-00386
05-00386A
05-00386B
Registry: Whitehorse

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

REGINA

v.

WILLIAM ANTHONY PEARSON

Appearances:
Jennifer Grandy
William Pearson

Counsel for Crown
Appearing on his own behalf

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): William Pearson is before me having entered a plea of guilty with respect to an impaired driving charge and a charge of failing to appear before the Court when required to do so.

[2] The impaired charge arises on the 2nd of October 2005, at which point Mr. Pearson was driving impaired. He drifted across the center line, overcorrected and the vehicle then rolled, ending up on its roof in the ditch. The police attended. Mr. Pearson was somewhat uncooperative. He did require and was given medical attention, but

when returned to the detachment, he refused to provide samples. The police did note some indicia of impairment, including slurred speech, and there was also the smell of alcohol and an admission from Mr. Pearson that he had been consuming alcohol.

[3] The matter was set down for preliminary hearing on the 30th of January. Mr. Pearson failed to attend at that point in time.

[4] Mr. Pearson comes before the Court with an extensive and related record, spanning the years of 1979 to 2000, and during that period of time, he has ten prior related driving offences. The last of those was in 1999, for which he received a sentence of six months. To his credit, there has been a gap over the last six years. However, it is clear to me that alcohol is a significant problem for Mr. Pearson, and indeed he admits he is a chronic alcoholic and his efforts in the past to address those issues have been unsuccessful.

[5] What is interesting about this particular case is that Mr. Pearson himself is seeking a sentence somewhat in excess of what the Crown may otherwise be seeking. My sense of the range in this area would put this sentence in the 18 months to two year range when one considers cases such as *R. v. Donnessey*, [1990] Y.J. No. 138. However, Mr. Pearson would like me to consider the top end of that range because of his interest in attending a federal facility to access specifically the alcohol treatment programming that they can provide, which is not available in the Territorial facility at this point in time.

[6] I am content that his request still puts him within the range when I look at his record and when I consider the aggravating factors of both his uncooperative behaviour

on this particular night, and also the motor vehicle accident. As we have discussed earlier, I am sure Mr. Pearson recognizes his great fortune in not having harmed or killed anyone else in the circumstances of the offence that brings him before the Court.

[7] So I am content that Mr. Pearson's request is within the range. Accordingly, there will be a sentence with respect to the impaired charge of two years. Because that is on the higher end of the range and higher perhaps than I would have gone, even though the fail to appear is one I would normally make consecutive, in the circumstances, I am going to make it a concurrent sentence of 30 days. So the total will be two years.

[8] I am not intending, even though two years is the one sentence in which I can order both a penitentiary term and a probation order to follow, I think, again, given that it is on the very highest end of the range, I am not going to attach anything to it, but I do urge you to access any programming you can while you are in the facility. Hopefully, you will meet with some success before your release and we will not see you back before the Court.

[9] There will have to be a driving prohibition. Crown is seeking five years. Mr. Pearson has some concerns about the impact that will have on his employment, as he is a heavy equipment operator. In light of his record and history, and also in light of the fact that a portion of that will run while he is in custody, I am satisfied that the request of the Crown is appropriate and there will be a driving prohibition of five years. So that starts running as of today, Mr. Pearson.

[10] I am going to waive the victim fine surcharges in the circumstances.

[11] I just need you to speak to the remaining count, Ms. Grandy.

[12] MS. GRANDY: The remaining count for the refusal could be marked
as withdrawn, please.

[13] THE COURT: Okay, thank you. So that is everything.

RUDDY T.C.J.