

Citation: *R. v. Sawrenko*, 2017 YKTC 68

Date: 20171114
Docket: 15-00355A
15-00355B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

NICHOLAS PAUL SAWRENKO

Appearances:
Paul Battin
Kelly Labine

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM J. (Oral): Mr. Sawrenko, I am sentencing you, as you know, with respect to two matters. One is a drinking and driving offence from July 25, 2015, an offence contrary to s. 253(1)(b) of the *Criminal Code*; and the other matter is the breach charge from July 13, 2017, in Dawson.

[2] I have had the opportunity to read both the Pre-Sentence Report that was prepared late last year, as well as the more recent *Gladue* Report. Both reports contain a lot of information, which is of assistance.

[3] It is clear to me, as acknowledged by the Crown and mentioned by your counsel, that there are many *Gladue* factors in this case: the fact that you grew up in an abusive home; that you were abused yourself; that you suffered abuse at residential school; that your mother attended residential school; and that you experienced racism in your life. All of those things are important for me to take into account.

[4] You had, as a younger man, undoubtedly, somewhat, as a result of what you experienced growing up, a very serious criminal history. The good thing is that, over the course of time, the offences that you committed became less frequent, and I think it would be fair to say less serious overall.

[5] Unfortunately, with respect to the matter before the Court, as you are aware, there are strict laws when there is a history of drinking and driving and, as has been mentioned this morning, you have five prior convictions. Granted, the last one is from 2004, but even back then, you received a 90-day conditional sentence and a three-year driving prohibition. The Court treated it seriously back then, as I must today.

[6] The Crown has tendered notice, and quite rightly, Ms. Labine, on your behalf, has not brought any sort of abuse application. This case seems to resemble very closely the decision in *R. v. Anderson*, 2014 SCC 41, where that individual also had multiple prior convictions. The Supreme Court of Canada found that in order to be successful in a *Charter* application, an abuse of process would have to be demonstrated. In that case, there was no information that would have led to a successful result.

[7] In this case, as Mr. Battin fairly points out, but for the *Gladue* report and the information that I have received about your history, the ultimate result today could be a sentence of more significance than what is being sought.

[8] I have taken into account the aggravating factors that have been described, and with which I agree, those being: the fact that the driving occurred in the downtown area; that there were multiple occupants of the vehicle; the readings of 160 mg% and 170 mg%; the driving pattern having alerted a civilian to call the RCMP and to follow your vehicle until such time as the RCMP intercepted you; and the prior related record for this type of an offence.

[9] In terms of mitigating factors, of course, there are the *Gladue* factors that I have mentioned and which I take into account.

[10] I also take into account your age, sir, and the fact that you have some medical issues that are being dealt with at this time.

[11] With respect to the 253(1)(b) offence, I agree that the appropriate penalty would be one that is the statutory minimum, that being four months of imprisonment. That will be followed by a three-year driving prohibition. During that time, Mr. Sawrenko, you will not be allowed to drive on any highway, road, or other public place.

[12] With respect to the 145(3) charge, I am taking into consideration that you have spent five days in custody. Looking at this globally, my view is that an appropriate penalty would be seven days in custody, consecutive. As you have spent five days in

custody, there will be two days remaining with respect to that offence. For the record, the total jail time is four months and two days.

[13] There will be a \$100 victim surcharge applied to each case, for a total of \$200, which is payable forthwith.

[14] With respect to Count 1 of the two-count Information, that matter was conditionally stayed at the end of the trial.

[15] Mr. Sawrenko, I suspect that it is difficult for you to go to jail. The one thing that I can tell you is there are big differences in terms of the old and new facilities, including the programming, quite frankly. I appreciate that it has been a long time since you have been in custody, but if it is of any benefit, the surroundings that you will have at the new correctional facility are much improved from what they were at the old facility.

CHISHOLM, T.C.J.