Citation: *R. v. Schinkel*, 2014 YKTC 42

Date: 20140814
Docket: 13-00775A
Registry: Whitehorse

TERRITORIAL COURT OF YUKON
Before His Honour Judge Schmidt

REGINA

v.

TERI LYNN SCHINKEL

Appearances:
David Jardine, Q.C. — Counsel for the Crown
Celia Petter — Counsel for the Defence

REASONS FOR SENTENCING

[1] SCHMIDT T.C.J. (Oral): This is a three count Information. At a very early stage, the accused pled guilty to each count. Count 1: Impaired driving causing bodily harm; Count 2: Operating a vehicle in a manner that was dangerous to the public, thereby causing bodily harm; Count 3: Refusing breathalyzer. The offence arose at the end of February of this year and she entered a plea in May.

[2] The circumstances of the offence are rather egregious. The accused was drinking at a house party. She had an ex-boyfriend who left the party after assaulting her, and she decided that because it was cold outside and he had left, I guess, suddenly without his coat, that she would drive around town looking for him to give him his coat. She knew that she had drunk too much, and she had drunk quite a lot. She

asked her brother to do the driving while she went on this mission and her brother declined because he had drunk too much too, but he asked her for a ride home.

[3] Now, there is absolutely no reason for her to leave that house party to take this coat to her ex-boyfriend. If he was cold, he would come back. She was very selfish in her decisions. She was only thinking about what she wanted to do and went about and did that knowing that she should not do that, and she would be endangering the public if she did it.

[4] When she was seen driving she was seen to be swerving so violently on the road that three young people who were driving in the opposite direction turned around, followed her, phoned 9-1-1, and made observations of her driving, including her striking another vehicle and carrying on.

[5] I do not think it is necessary to look at all the details, but at some point she did come across her ex-boyfriend who got into the car and proceeded to assault her again and then leave. She said she was traumatized by that event and out of her mind because of it and took off in the car.

[6] She drove for quite a considerable period of time in a busy part of the Alaska Highway and Whitehorse. She was all over the road; driving with one flat tire; at high speeds, 130 to 140 kilometres per hour; in the wrong lane; going through stop signs; and hitting medians. When she was coming down the hill into Whitehorse, she hit another car and that car was pushed off the road and across the median and over a bank. The person in that car was injured fairly badly, although has recovered,

generally, but it was a difficult time after that for the young woman who was injured, and a difficult time for her family because the only car the family owned was totalled.

[7] The accused was in such a state that she was very difficult to deal with for the paramedics, and she has apologized to the paramedics today. She was thrashing and kicking around and accusing them of things and making quite a difficult situation for them to do their duty in this major car accident. And then she continued this conduct in the hospital, shouting and having to be restrained, all in the earshot of the person who had been genuinely injured.

[8] The accused presented herself as the victim in all of this to all and sundry. It must have been difficult for the injured person who was just minding her own business and trying to go home to hear the accused carry on as if she was being badly treated or wrongly accused. And in the course of all this, the accused refused to take a breath test.

[9] The accused says that this accident was a turning point for her, that she realizes the error of her ways and she is reforming. I do not doubt that. She is an Aboriginal person. She is third generation of a grandfather who went to a residential school, and she has had a difficult childhood, as her own mother did. And now she is a mother herself and she is really carrying on with the same alcoholic and drug-addicted lifestyle that she saw and says that has traumatized her so badly. Nobody knows why that happens.

[10] She says that this accident brought her to a different way of thinking, and that she now wants to care for her child properly. Some of her relatives have come forward

and said that they also support her and want to take the same path, or are taking the same path, and if all of that is true -- I have no reason to disbelieve it -- things may get better in that family. The Court can be of some assistance in ordering that alcohol abuse has to be dealt with by the accused.

[11] The Crown would be seeking a sentence of nine months, but concedes that the *Gladue* case should be considered and the factors of Aboriginal people should form part of the thinking of the sentencing judge. What they say is that *Gladue* factors should lead the Court to impose a lesser sentence of six months rather than the nine months that they would otherwise be seeking. They handed up a case that really is not very similar -- except that there was impaired driving and bodily harm caused -- where four months was imposed by the appeal court after the trial judge had suspended sentence. That case is distinguished by defence by saying that, well, that case was not an Aboriginal case. The defence is saying that, whatever the sentence would be for the general population, there should be no jail time imposed, considering *Gladue*.

[12] *Gladue* says that with respect to sentencing of Aboriginal people, we should not impose jail if there is another reasonable alternative. There is, of course, an alternative to jail in any sentence, Aboriginal or not, unless there is a minimum sentence. But in cases of Aboriginal offenders, the historic treatment of Aboriginal persons and the disproportionate number of Aboriginal persons in jail should cause a court to weigh sentencing principles in a way giving greater weight to restorative and rehabilitative opportunities. That is a very brief consolidation of what was said.

[13] But the mistake that we make is that there is always an alternative to any jail sentence unless there is a minimum sentence, so it is not what *Gladue* really meant. It meant if there is a reasonable alternative, given all the considerations and principles of sentencing, that a court has to use it in order to come to a fit sentence, Aboriginal offender or not. And in this case, there is a need to impose a sentence that has a deterrent and denunciatory effect.

[14] Impaired driving is a curse on the community and it is no less a curse in these northern communities. If we are to get anywhere -- and I believe we are getting somewhere given the numbers that are quoted from time to time -- then courts need to stand firm. That does not mean that courts should not take into consideration all circumstances of the parties, including their Aboriginal status, and come up with a sentence that is sensible in deterring but also sensible for rehabilitation.

[15] If a person is rehabilitated as Ms. Schinkel at this time is determined to be, then we really will not have to worry about her anymore. But that does not address the denunciation and deterrence that impaired driving particularly calls for, and there are minimum sentences for straight impaired driving. This is impaired driving causing bodily harm. It is proceeded on by indictment, and there must be an expectation in the community that, for this kind of driving under these kinds of circumstances -- hurtling two tonnes of metal down a hill at these kinds of speeds, drunk, and unable to keep your car on the road -- there will be a response and it will not be: "That's good, do better next time, you have obviously been traumatized by what happened here and by your conduct." It has to be more than that.

[16] It is really important to take the *Gladue* principles to heart. Long before *Gladue* was ever thought about by the Supreme Court of Canada, I found myself sitting in the little island native village of Alert Bay. It was one of my first visits there, and the Band said, "We'd like you to come to a meeting." I was only there for a day. I said, "Yeah, okay, I'll come to the meeting." They took me to a hall -- you have to appreciate that this is a very small community -- and I went in the door with this gentleman and there were 500 people sitting in that community hall. I do not know if there were 500 people in that village, but they came from everywhere because they had been promised a chance to give their opinions to a judge. They spent the afternoon telling me about their history and their community, how in the '20s their elders were taken to Oakalla Prison in New Westminster for wearing traditional clothes, for going to potlatches, for being in a traditional canoe, and they said this has got to stop. The last judge here was sending our people to jail just like they did in the '20s. I heard their grievances and it changed me forever.

[17] I understand what the Supreme Court of Canada was trying to do in *Gladue*. In that community, in the next six years, I did not send another person to jail. But it was not because I was not going to send any more Aboriginals to jail. I said to them at the end of this very trying time that if you give me an alternative that is restorative, that brings this person back into the community that you are involved in, I will not send them to jail unless there is no reasonable alternative. In each case the elders met and spoke in court, offering a rehabilitative or restorative alternative that they would supervise in the community. Many years later, the Supreme Court of Canada said the same thing.

[18] That approach was tempered somewhat in *R. v. Morris*, 2004 BCCA 305, a case out of Lower Post, where the Aboriginal community developed an extensive community response that was both restorative for the community and rehabilitative for the offender. The suspended sentence imposed by the judge, incorporating the plan of the community for a restorative approach, did not sufficiently address denunciation in cases of domestic violence. A one year jail sentence was imposed by the Appeal Court instead. Clearly the court must strike a balance.

[19] I do not think there is a reasonable alternative in this case that speaks to the principles of sentencing that I am obliged to adhere to. There needs to be denunciation. That denunciation, however, can be mellowed and married with a rehabilitative sentence.

[20] I am proposing a period of incarceration of 60 days to be served intermittently, with a two-year period of probation that deals with the rehabilitative aspects that are so necessary.

[21] Everybody says that the accused speaks frankly and is honest in what she says. And to speak frankly to you, Ms. Schinkel, I think you need to, for your own healing, to be accountable and I think this sentence will, in opposition to what some of the people have said, assist you in your healing; it will not detract from it.

[22] Now, I can do one of two things. I can do the intermittent sentence now or I can leave it until tomorrow for counsel to work out the terms. The reason it is intermittent is to -- and I should state this on the record -- is so that it allows you to carry on with your healing and look after your child. I have heard from a number of people that seem

responsible. I am certain that they can be part of your child's care while you are doing your intermittent time.

[DISCUSSION WITH COUNSEL]

[23] There will be a term of probation that accompanies this order and continues for a period of two years from today. In terms of probation, they go right through starting today:

1. You are to keep the peace and be of good behaviour.

2. You are to appear before the Court when required to do so by the Court.

3. You are to notify the Court or Probation Officer in advance of any change of name or address and promptly of any changes of employment or occupation.

4. You are to remain within the Yukon Territory unless you obtain written permission from the Court.

5. You are not to consume alcohol during the 48-hour period immediately preceding the time that you are to report to the Whitehorse Correctional Centre.

[24] Now, there will be some other terms that are not specific to that sentence, these are additional terms:

1. You are to report to a Probation Officer tomorrow by 4:00 p.m. and thereafter as required by your Probation Officer and in the manner required by the Probation Officer.

2. You are to keep the Probation Officer advised as to your place of residence at all times.

3. You are not to possess or consume alcohol and/or controlled drugs or substances that have not been prescribed to you by a medical doctor. You are to provide a sample of your breath for the purpose of analysis upon demand by a Peace Officer who has reason to believe that you may have failed to comply with this condition.

4. You are not to attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off-sales, bar, pub, tavern, lounge or nightclub.

5. You are to attend and actively participate in all assessment and counselling programs as directed by your Probation Officer and complete them to the satisfaction of your Probation Officer for the following issues: substance abuse, alcohol abuse.

6. You are to provide consents to release information to your Probation Officer regarding your participation in any program that you have been directed to do pursuant to this order.

7. Your right to drive a motor vehicle is suspended for a period of one year.

[DISCUSSION WITH COUNSEL]

[25] THE COURT: I want to thank everybody that spoke today, both as a victim and as a person who is going to provide support in the future, and to Ms. Schinkel as well for taking a very difficult step of speaking to the various people that were harmed, and doing that in a thoughtful way. All the presentations that were made in Court today were thoughtful and appropriate.

[26] This is a difficult problem that maybe, Ms. Schinkel, you are the person that will change this in your family. Certainly they are all thinking about it now. I also am very

encouraged by the way that your child is coming first in your thinking and is encouraging you to be strong.

[27] THE ACCUSED: Thank you.

[28] THE CLERK: Your Honour, the 60 days, was that 60 days concurrent on each count?

[29] THE COURT: Concurrent on each count.

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SCHMIDT T.C.J.