

Citation: *R. v. Williams*, 2012 YKTC 35

Date: 20120410
Docket: 10-00517A
10-00517B
10-00517C
10-00517D
10-00517E
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Schmidt

REGINA

v.

ALEXANDER DONALD WILLIAMS

Appearances:
Ludovic Gouaillier
Melissa Atkinson

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] SCHMIDT T.C.J. (Oral): I have had an opportunity to go through the documents filed, including the cases and the Pre-Sentence Report. There are a number of charges here. The main substantive charge is that Mr. Williams operated a motor vehicle while impaired by alcohol or a drug and did thereby cause bodily harm to four named individuals. There are a number of other charges as well, which I will deal with.

[2] The motor vehicle accident, which is the substance of the Count 1, which I have just referred to, came about after an evening of drinking with friends. At some point in the evening the friends, including the accused, Mr. Williams, decided to drive. They got

into a van with Mr. Williams doing the driving. He was observed to be driving in an erratic manner and was estimated to be travelling on the Riverdale bridge at the speed of 100 kilometres per hour. As he approached the downtown area, which is a reduced speed area with traffic lights and pedestrians and a considerable amount of traffic, he was observed to be driving too fast. The accident reconstruction expert put that speed at 79 kilometres per hour, which is considerably higher than the allowable speed in the downtown area. He collided with a taxi that was waiting at a red light. Apparently no brake lights came on prior to the collision on the van that he was driving, and the resultant collision injured four people, two in the taxi and two in his vehicle. He escaped injury.

[3] Mr. Williams was noted to have a mild odour of liquor on his breath and slurred speech. He was unsteady on his feet and his movements were slow and deliberate. He was read a breathalyzer demand, but he refused to take a breathalyzer. That refusal leads to the charge on Count 6. He also was uncooperative in that he gave another person's name as his name, which he later, after speaking to counsel from a telephone at the detachment, recanted on and gave his correct name.

[4] The four people injured were not seriously injured in that their injury did not lead to loss of any of their abilities to see, hear, think or walk. It did not lead to the loss of any limbs, but it did lead to ongoing injuries that are not itemized in the statement of facts or by any of the counsel.

[5] The circumstances are aggravated, firstly, by the injuries that were caused and secondly, by the driving pattern, which was extreme taking into account the time of day

and the location. The accident was only waiting to happen and it did. The injuries were less than the injuries that occurred in the case of *R. v. Schmidt*, 2012 YKSC 17, which has been put before me, but they were injuries nonetheless. Another aggravating factor is that he has a record in 2007 for driving over .08.

[6] There is some discussion amongst counsel about whether the guilty plea is a mitigating factor in this case. The Court finds that it is not a mitigating factor in this case. A guilty plea is often a mitigating factor because it is an expression of remorse. The remorse was late coming, if it did. I find however that there is some remorse, but it is mitigated by his attempts to thwart the investigation by giving a false ID, refusing to cooperate with the breath test, and, by his poor performance on bail. There were a number of breaches of his bail terms. A warrant went out on more than one occasion, and was active for some period of time until he was arrested in Alberta and brought back. He was released on previous occasions to that for breaches, but he continued to behave badly with respect to the court orders, and ultimately was held in custody. All of that has the effect of tainting the credit for a guilty plea as a sign of remorse. But as the Court notes, the Court is satisfied that he has, all this time later, come to some sense of remorse with respect to this.

[7] On the mitigating side, he has some potential and some hopes and dreams for the future in becoming an electrical engineer. After he was put in custody, he has begun that course of study. He has family support. As the Crown noted, that family support is not something normally found in a *Gladue* assessment in a case of an accused who is First Nations. He does not have the same problems that *Gladue* refers to and instructs the Court to take into account when sentencing aboriginal offenders.

There appears to be no link between unfortunate circumstances and the offence that occurred here.

[8] The Crown is seeking a sentence of nine to 12 months globally. The defence is seeking six to nine months globally. Both are making no argument with the three year driving prohibition, which I think is reflected in a number of similar cases in the Yukon and it is essentially a joint submission with respect to the driving suspension.

[9] Mr. Williams has spoken and says that he takes full responsibility and appears convincing to the Court with respect to that. The Court has also reviewed a number of letters from various persons in his community that indicate that he is a person who has potential, that he is a good person in the community, that he has now been involved in Alcoholics Anonymous and is a suitable candidate for rehabilitation. He says he has hopes and dreams for his future that are attainable should he apply himself.

[10] The Court sentence will be as follows: With respect to Count 1 on Information 10-00517A, that is the count of impaired driving causing bodily harm to the four individuals, a sentence of six months in custody. He will be given credit at 1.5 to one for the 184 days that he spent in custody with respect to that count. On Count 5, that is obstruction, Count 6, refusal, and with respect to Count 1 on 10-00517D and the single count 10-00517E, there will be a sentence of one month consecutive but concurrent to each other on those four counts.

[11] MR. GOUAILLIER: I'm sorry, Your Honour, what is consecutive to what and what is concurrent?

[12] THE COURT: The one month is concurrent on those four counts, but consecutive to Count 1 of that other Information.

[13] MS. ATKINSON: Thank you.

[14] THE COURT: The Court does believe that probation will be of assistance in this case and believes it has a duty to put him on probation in order to assist him with the goals that he says he now has for his future for rehabilitation. The previous parts of the sentence were directed particularly towards denunciation and deterrence. There will be a one year period of probation to assist in rehabilitation.

1. To keep the peace and be of good behaviour;
2. To appear before the Court when required to do so;
3. To serve his probation term either in British Columbia or Alberta. The Court gives permission to serve the probationary term in Alberta, subject to making sufficient arrangements for the transfer of his probation to Alberta with the Probation Officer;
4. He is to advise the Probation Officer at all times of his current address;
5. He is to abstain absolutely from the possession of or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to him by a qualified medical practitioner;
6. He is to provide a sample of his breath and/or urine for the purpose of analysis upon demand by a Peace Officer who has reason to believe that he may have failed to comply with this condition;

7. He is to take such substance abuse assessment, counselling or programming as is directed or approved by his Probation Officer;

[15] There will be a Court imposed driving prohibition of three years under s. 259 of the *Criminal Code*.

[16] THE CLERK: Victim fine surcharge?

[17] MS. ATKINSON: Yes, I'm asking that be waived. He has been incarcerated for some time and I anticipate taking a little while to find work.

[18] THE COURT: Okay. I will waive the victim fine surcharge.

[19] MR. GOUAILLIER: Thank you.

[20] THE CLERK: And the outstanding charges?

[21] MR. GOUAILLIER: There will be a stay of proceedings.

SCHMIDT T.C.J.