

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Faulkner

Regina

v.

Murray Williamson

Appearances:

Michael Cozens

Lee Kirkpatrick

Edward Horembala, Q.C.

Counsel for Federal Crown
Counsel for Territorial Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] FAULKNER J. (Oral): Mr. Williamson is before the court for sentencing on the charge of operating a motor vehicle while disqualified, contrary to s. 259(4)(a) of the *Criminal Code*, and at the same time and place, with operating a motor vehicle that was not insured and was unregistered contrary to the *Territorial Motor Vehicles Act*, R.S.Y. 2002 c. 153.

[2] It appears that the offender was prohibited from operating a motor vehicle on the date in question, which was last October 23rd, by virtue of him having been convicted, back in June 2003, for an offence contrary to s. 253(b) of the *Code*, at which time he was prohibited from operating a motor vehicle for a period of one year. At that time, the Court had apparently recommended that Mr. Williamson be eligible

to apply for the interlock program after three months.

[3] Mr. Williamson did, in fact, apply for the interlock program and it appears that on the 20th of October, some three days before the commission of this offence, Mr. Williamson was, in fact, approved by the Driver Control Board to participate in the interlock program. Inexplicably, Mr. Williamson, rather than waiting until he had completed the arrangements for the interlock program, by getting his vehicle equipped and so forth, went ahead and drove anyway.

[4] It is difficult for me to conceive, and probably difficult for the offender to conceive at this point, why he would have made such a bone-headed move, but he did do it. Now, he must suffer the consequences, which are several and severe. In the first place, he is facing incarceration for the commission of the offence and also, by virtue of the operation of Territorial law, the time at which he can get his driver's licence back is receding some years into the future.

[5] The view of the courts in this jurisdiction to the offence of driving while disqualified has been quite clear. The prohibition orders are a means of protecting the public and enforcing the drunk driving laws. As a result, it must be known by one and all that the consequences of driving while disqualified and breaching that particular court order will be severe. That position has been clear in this Territory for as long as I have been on the bench here, going back to the *R. v. Battaja* case, [1990] Y.J. No. 208 [QL], if not before.

[6] If I understood Mr. Horembala's argument, it was that *Battaja, supra*, may need to be revisited because since that time, the consequences under Territorial legislation for driving while disqualified have become much more severe, and that, therefore, the driving prohibition provides the deterrent effect, and jail is not necessarily, then, as inevitable as it once was.

[7] I think the logical difficulty with Mr. Horembala's argument is this: It is argued that the extensive driving prohibitions under Territorial law are a deterrent, but it has to be remembered that that deterrence is somewhat questionable when the index offence itself is driving while disqualified pursuant to a prior order of the court not to drive. So, I am not persuaded that simply the threat of a longer prohibition is sufficient to bring home the message to one and all that driving while disqualified is simply not on. Accordingly, I find that *Battaja, supra*, continues to be good law in this jurisdiction.

[8] It was indicated to Mr. Horembala, in argument, that there is an additional aspect to this matter, which will need to be visited further. As Mr. Horembala pointed out, there is a problem with the Territorial legislation with respect to applying for the interlock program. The period of time that must elapse upon a first offence is three months; the period of time that must elapse upon a third or subsequent offence is three years. The *Act* says nothing about the situation of a man such as Mr. Williamson, who is deemed to be a second offender under the Territorial legislation.

[9] Mr. Horembala had initially requested a recommendation from me that the Driver Control Board consider Mr. Williamson for the interlock program after some period longer than three months but less than three years. However, in my view, the position that the Crown takes, which is that the Yukon Driver Control Board, being a creature of statute, could not pay any heed to that recommendation and if they did, the order would be *ultra vires* and ineffective, is well taken.

[10] I have indicated that I would be prepared to retain jurisdiction over that aspect of the matter in order that it could be properly argued, the only possible route of attack being a constitutional one. That, of course, would require not only a fuller argument than I heard, but also notice to the Crown.

[11] With respect to the charge of driving while disqualified, Mr. Williamson, I am taking into account your guilty plea and considering it to be an early one in light of the circumstances that lead to the delay in the matter getting before the court. Those circumstances were not entirely of your making. I am also considering the circumstance that had you got yourself properly organized, that, in fact, on the date in question, you could have been legally operating a vehicle if you had completed the requirements of the interlock program.

[12] In all the circumstances, you are sentenced to a period of imprisonment of 21 days. I am certainly prepared to allow that sentence to be served intermittently. We will come back to that aspect of the matter.

[13] With respect to the Territorial matters, on the charge of operating with no insurance; the fine is \$400, and the surcharge is \$60. The charge of operating an unregistered vehicle; the fine is \$125. The surcharge is \$18.75. I will allow 60 days time to pay those fines.

[14] There will also be a surcharge on the *Criminal Code* matter of \$50. Again, 60 days time to pay.

[15] Mr. Horembala, you indicated --

[16] MR. HOREMBALA: I am asking that he commence his sentence intermittently commencing next Friday evening until Monday morning, continuing every weekend thereafter on that basis until the sentence is served.

[17] MR. COZENS: No issue.

[18] THE COURT: All right. The sentence will be served intermittently, commencing on the 26th of March at 6:00 p.m. to the following Monday at 7:00 a.m., thereafter from each Friday to Monday, from time to time, until the sentence has

been fully served.

[19] At all times when you are not actually in custody, Mr. Williamson, and up until the time the sentence has been served, you will be subject to a probation order. The terms of that order will be:

1. You will keep the peace and be of good behaviour.
2. You will report to the court as and when required.
3. You will report within two working days to an adult probation officer and thereafter as directed.
4. You will advise the probation officer in advance of any change of name or address and promptly notify him of any change of occupation or employment.
5. You will not consume any alcohol or controlled drugs or substances within the 48 hour period before going to the Whitehorse Correctional Centre each Friday.
6. You will submit to a breath test or urinalysis on demand by your probation officer or a peace officer, if either believes you have such substances in your body, contrary to the terms of the probation order.

[20] The remaining counts --

[21] MS. KIRKPATRICK: To be stayed.

[22] THE COURT: In terms of the outstanding matter, which is the interpretation of the *Motor Vehicles Act*, as I have already indicated, I will retain jurisdiction in this matter. However, providing that if Mr. Williamson's application in

that regard has not been perfected within a period of six months, I will consider myself to be functus.

FAULKNER T.C.J.