SUPREME COURT OF YUKON

Citation: *R. v. Hagwood*, 2017 YKSC 48

Date: 20170914
S.C. No. 16-01509
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

DENNIM HAGWOOD

Before Mr. Justice L.F. Gower

Appearances:
Keith Parkkari — Counsel for the Crown
André W.L. Roothman — Counsel for the Defence

REASONS FOR SENTENCE

INTRODUCTION

[1] GOWER J. (ORAL): This is the sentencing of Dennim Hagwood on a charge of dangerous driving causing bodily harm to Alvin Griffith on May 8, 2016, near the village of Haines Junction, contrary to s. 249(3) of the *Criminal Code* ("the *Code*"). Mr. Hagwood was charged with this offence on May 9, 2016. He was released the following day on a recognizance with a number of conditions, including a condition that he not operate any motor vehicle. The preliminary inquiry was held on November 17, 2016. I understand that the only issue was whether the driving pattern was dangerous. There was no issue about Mr. Griffith suffering bodily harm. Ultimately, the defence

consented to the matter being committed for trial. A guilty plea was entered on April 28, 2017 and a pre-sentence report ("PSR") was ordered. The sentencing was adjourned until September 14, 2017.

CIRCUMSTANCES of the OFFENCE

[2] On May 8, 2016, in the later afternoon, the offender was driving his pickup truck westbound on the old Alaska Highway approximately seven kilometres east of the new Alaska Highway. There were three friends in the vehicle. Mr. Griffith, who is a lifelong friend of the offender, was seated in the front seat. Lynne Raita and Orian Sinkler were seated in the back seat. There were two dogs in the box of the pickup truck. The roadway was gravel and relatively narrow, described as being wide enough for one lane with opposing traffic. There were no shoulders on the road. The surface was dry. Although a speed limit sign indicating 40 kilometres per hour was posted at the west end of the road near the outer limits of Haines Junction, the offender accessed the road by another route which did not take him by the speed limit sign. The roadway passed through a rural area of undeveloped bush.

[3] The group had been target shooting that afternoon and alcohol had been consumed by some of them. However, there is no evidence that the offender had consumed any alcohol.

[4] On their way back to Haines Junction, the offender was driving at a speed of approximately 98 kilometres per hour. He lost control of the pickup truck and it veered off the road to the right knocking down a number of trees, and then coming back onto the road where it rolled over onto its roof.

[5] One of the dogs was severely injured and had to be put down at the scene.

[6] Ms. Raita suffered injuries to her neck and left foot, but all of them resolved in a relatively short period of time.

[7] Mr. Sinkler suffered some injuries to his chest and shoulder and was prescribed pain medication for a time. He also lost one week of work at $35 per hour times 35 hours, or $1225.

[8] The Crown is not alleging that the injuries to Ms. Raita or Mr. Sinkler constitute bodily harm.

[9] Mr. Griffith suffered a skull fracture and was initially thought to be very close to death. He received first aid and CPR from the offender and others at the scene of the accident. He was then taken to the Whitehorse General Hospital, however, after a few days, he apparently discharged himself. The author of the PSR says that he suffered back and neck issues and also has memory loss. Mr. Griffith said that he and the offender remain very good friends to this day and that he is grateful to the offender for saving his life after the vehicle crash.

CIRCUMSTANCES of the OFFENDER

[10] The offender is a 24-year-old member of the Champagne & Aishihik First Nations. He holds both Canadian and American citizenship. His mother is also a member of the Champagne & Aishihik First Nations and his father is a Caucasian American. The offender was raised primarily in Haines, Alaska.

[11] The offender's father was a professional fisherman and his mother was a full-time homemaker.

[12] The offender described both his parents as alcoholics and emphasized that both of them continue to drink alcohol heavily. He also described his upbringing as very

difficult and dysfunctional, including significant domestic violence and alcohol abuse between both of his parents. He stated that child protection authorities were involved with his family in his early teenage years. At age 14, his parents separated and he and his older brother were placed in foster homes for four years until they were legally adults.

[13] The offender has no criminal record in Canada and no related driving record anywhere. However, he has a conviction for importation of a controlled substance, for which he was jailed for 11 months in Juneau, Alaska in 2010 at age 18. His jail term was followed by 18 months of house arrest/probation, including 750 hours of community service. He did well on his probation and it was terminated early.

[14] The offender completed his GED in 2011.

[15] It appears that the offender has been gainfully employed since childhood, notwithstanding his dysfunctional upbringing. He has worked in commercial fishing, fish canning, mechanics, drilling and blasting, and heavy equipment operation. He holds a journeyman carpenter ticket from Alaska

[16] He is currently employed as an underground miner with JDS Silver, where he has worked since May 2016. The mine superintendent and the offender's shift boss each provided letters of reference describing the offender as a hard-working, reliable and safe worker, who is a valuable part of their team. He currently works at the mine for two weeks at a time, with two weeks off. His employer arranges transportation from Whitehorse, return, to the mine.

[17] The offender does not have any significant assets or debts and takes home approximately $6500-$7000 per month from his employment. He has approximately $8000 in savings.

[18] The offender is single and has no children and resides in rental premises with his older brother, with whom he has a very close relationship. His older brother has a one-year-old child with his girlfriend.

[19] The offender described himself as a casual drinker, which has been confirmed by his older brother and by two substance abuse risk assessment instruments administered by the author of the PSR. He is said to have no problems related to substance abuse.

[20] The PSR states that the offender feels very bad about what happened and that he presented as sincere and remorseful. He said that he offered to help Mr. Griffith with anything he needed as a result of the incident. He said that he bought Mr. Griffith gear to go back to work and helped him get a job at JDS Silver.

[21] A further criminogenic risk assessment conducted by the author of the PSR indicates that the offender has a low level of criminogenic needs and requires a low level of supervision.

[22] He presented to the author of the PSR as open and forthcoming, maintaining contact, and reporting as directed. During the 16 months he has been on release under the recognizance, he has not incurred any breaches or new criminal charges. As stated, he has been subject to a no driving condition for the entire period. In summary, the author of the PSR describes the offender as having stable housing, stable employment,

and stable finances, as well as being a suitable candidate for a community-based disposition.

POSITIONS of the PARTIES

[23] The Crown seeks a jail term of six months in this case, plus a driving prohibition for two years, plus a discretionary DNA order, plus what it says is a mandatory firearms prohibition for 10 years under s. 109 of the *Code*.

[24] Defence counsel seeks a suspended sentence with a period of probation for two years. In the alternative, if a jail sentence is required, then the defence asks for 30 days intermittent, and no driving prohibition, no DNA order and no section 109 order.

ANALYSIS

[25] I recently completed reasons for sentence in *R. v. Kloepfer*, 2017 YKSC 44, which was a case involving charges of dangerous driving causing bodily harm and leaving the scene of an accident. In that case, I reviewed a number of sentencing precedents, so I am familiar with the law in this area.

[26] I acknowledge that general deterrence and denunciation are paramount objectives in sentencing for dangerous driving: *R. v. Bhalru*, 2003 BCCA 644. I also acknowledge, as does defence counsel in this case, that the usual range of sentence for impaired driving causing bodily harm, which is a generally comparable offence to dangerous driving causing bodily harm, is 4 to 10 months in jail: *R. v. Lommerse*, 2013 YKCA 13, at para. 15. As I concluded in *Kloepfer* at para. 72, jail is normally imposed as the sentence for impaired driving or dangerous driving causing bodily harm, absent exceptional circumstances.

[27] That said, a range is only a guide to courts and it is not an absolute limit to what courts may impose in every case. As has been stated many times elsewhere, sentencing is a highly individualized process and each case is different. The fundamental principle is that the sentence should be proportionate to the circumstances of the offence and to the offender's moral culpability. This was a dominant theme in the decision from the Court of Appeal for Yukon in *R. v. Schinkel*, 2015 YKCA 2. There the offender had been convicted of three offences, impaired driving causing bodily harm, dangerous driving causing bodily harm, and refusal to provide a breath sample. The sentencing judge observed the following mitigating circumstances:

- the female Aboriginal offender was apparently relatively youthful;
- she had suffered much abuse and neglect during her formative years and had been diagnosed with chronic severe post-traumatic stress disorder. She had been assaulted on the evening of the offence and was being assaulted at the time of some of the poor driving;
- the offender took full responsibility and entered guilty pleas at an early stage;
- the offender had numerous support letters;
- she showed extreme remorse; and
- most significantly to the sentencing judge, the offender stopped drinking immediately following the offences and had completed residential alcohol treatment prior to sentencing, to the point where the trial judge accepted that she was already rehabilitated.

[28] On the other hand, the sentencing judge also recognized that the circumstances of the offences were "rather egregious". The offender drove for quite a considerable

period of time on a busy part of the Alaska Highway and in Whitehorse. She was all over the road, driving with one flat tire, at high speeds of up to 130 to 140 kilometres per hour. She was in the wrong lane, going through stop signs and hitting medians. She hit another car and the 16-year-old young woman in that car was injured fairly badly, suffering serious physical and emotional injuries, as well as property and income loss. The offender was in such a state that she was very difficult to deal with for the paramedics and other officials, thrashing, kicking, accusing them of things and having to be restrained.

[29] The Crown sought a global sentence in the range of six months, recognizing that there were significant *Gladue* factors, relying principally on the *Lommerse* decision from the Court of Appeal for Yukon, cited above.

[30] The sentencing judge imposed 60 day intermittent jail sentences, concurrent, together with a two-year period of probation and a one-year driving prohibition. The Crown appealed to the Court of Appeal for Yukon. The Court of Appeal dismissed the appeal, other than to attach the one-year driving prohibition to the charge of refusal to provide a breath sample. The Court recognized that although the sentences were below the ordinary range for these offences, they were fit for this particular Aboriginal offender. As stated, the Court focused to a large extent on the fundamental principle of proportionality and recognized that the determination of a fit sentence is a highly individualized process (at para. 26). The Court also gave significant deference to the sentencing judge.

[31] While the mitigating factors in the case at bar may not be quite as impressive as those in *Schinkel*, they are nevertheless approaching what I would characterize as exceptional circumstances:

- a relatively youthful Aboriginal offender (24 years old);
- *Gladue* factors, such as alcoholic parents, domestic violence, the involvement of child protection authorities and lengthy foster home placements;
- a guilty plea, albeit after a preliminary inquiry where there was a consent committal for trial;
- the absence of a related criminal record;
- a steady work history, notwithstanding a dysfunctional upbringing;
- support from his employer to continue working;
- no substance abuse problems;
- the offender was sober at the time of the accident;
- a supportive brother;
- a supportive victim, who is grateful to the offender for saving his life after the crash;
- a low level of criminogenic needs and a low level of required supervision;
- positive behaviour while on release under his recognizance, including no driving for 16 months;
- acceptance of responsibility and sincere remorse;
- a person with stable housing, stable employment and stable finances; and
- a suitable candidate for a community-based disposition.

[32] Further, in my view, the circumstances of the dangerous driving in the case at bar were less serious than those in *Schinkel*, notwithstanding the serious injuries to Mr. Griffith.

CONCLUSION

[33] On balance, and taking all the circumstances into account, *Schinkel* leads me to conclude that the paramount principles of denunciation and deterrence can be met in this case with a 90 day intermittent sentence under s. 732(1) of the *Code*. As I said, the offender currently works a shift with the JDS Silver mine of two weeks on and two weeks off. According to his counsel, he is presently scheduled to return to work on September 28, coming back to Whitehorse on October 12. According to the PSR, his employer transports him between Whitehorse and the mine, return. This schedule is to repeat itself every two weeks, with the offender going back to work on October 26, and then returning to Whitehorse on November 9, and so on. In general, my intention is to order the offender to surrender himself into custody at the Whitehorse Correctional Centre ("WCC") at 7 PM on the day after his return to Whitehorse for each break of two weeks off, and that he be released from custody at 7 AM on the day before he is scheduled to return to the JDS mine, until the 90 days is served, subject to statutory remission. The only exception would be for the time period at the commencement of his sentence. Since the offender is currently not working, I order that he surrender himself into custody at WCC tomorrow night at 7 PM and that he be released on September 27 at 7 AM, in order to prepare for his return to the mine.

[34] I further order that the offender will be placed on a period of probation until the entirety of the intermittent sentence is served, again subject to statutory remission. The

conditions of the probation will be limited to those statutory conditions set out in the *Code*.

[35] I further order that the offender will be prohibited from driving under s. 259(2) of the *Code* for a period of one year.

[36] I decline to make the discretionary DNA order sought by the Crown.

[37] Further, for the reasons I stated in *Kloepfer*, at para. 79, I decline to make any firearms order under s. 109(1)(a) of the *Code*.

[38] However, on my own motion, pursuant to s. 738(1)(b) of the *Code*, I order that the offender pay restitution to Mr. Sinkler in the amount of $1400, representing his lost week of wages, within 30 days of the date of these reasons.

[39] Similarly, I order that the offender pay the appropriate victim surcharges required by s. 737 of the *Code*, again within 30 days of today's date.

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GOWER J.