

Citation: *R. v. Bays*, 2010 YKTC 107

Date: 20091130
Docket: 08-00117
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

BRUCE MERRILLE BAYS

Appearances:

Richard Meredith
Michael Reynolds

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Mr. Bays is before me having entered pleas of guilty to one count of impaired driving and one of driving while disqualified.

[2] The facts themselves are not unusual. On the 21st of May, 2008, the police received a report that Mr. Bays was driving while under the influence. Apparently, he had been at home on this evening on a bender. He ran out of alcohol. He called a cab to take him to get more alcohol. Unfortunately, the cab did not arrive and he made the very ill-advised decision to get behind the wheel and drove to off-sales himself. I believe it was the off-sales clerk that reported him to the RCMP.

[3] The police stopped him shortly thereafter, noted indicia of impairment, and he

was arrested for impaired driving, and provided a breath demand to which he refused. The police had some significant concerns about the state of his health at the time, as he made a number of comments indicating that he was potentially suicidal. I should also say that he was prohibited from driving at the time as a result of a prior conviction for impaired driving in March of 2008.

[4] Mr. Bays is before me today making application for a curative discharge in relation to the impaired driving count. It is important to note that Mr. Bays has been a participant in our Wellness Court for almost a year and a half now, I think. Over that course of time, I have had a great deal of information from several sources with respect to Mr. Bays' performance in this process. I think that the Crown very fairly noted that each of the reports received with respect to Mr. Bays noted his performance to be excellent and quite exceptional. He has been diligent in his efforts, and he has made a remarkable change over the last year and a half. I would go so far as to say that he does not look like the same man who first appeared before me in this court.

[5] I am also in the somewhat unusual position of having a joint submission for a curative discharge before me today. I have to say this is probably the most straightforward curative discharge application that I have ever heard. Crown is in agreement that the information provided to me today supports a finding that the test to be applied in determining whether or not a curative discharge is appropriate has been met. I am not going to spend a great deal of time going back through the information; suffice it to say that the first branch of the test which requires me to be satisfied on evidence, medical, or otherwise that Mr. Bays is in need of treatment is well satisfied by the information provided by Dr. Chau, Dr. Heredia, Ms. Martha White, and Mr. Troy

Cairns, all of whom have dealt with Mr. Bays over the last year and a half.

[6] The second branch of the test, which is often the more difficult of the two, is whether or not a discharge would be contrary to the public interest. There are a number of factors that the Court considers in determining whether or not a discharge would be contrary to the public interest. In this particular case, defence counsel has done a very able job of outlining all of the considerations that the Court looks at in determining whether or not a discharge would be contrary to the public interest. Again, it is not my intention to repeat that today. I do want to say, though, that, for the most part, it comes down to whether or not Mr. Bays has demonstrated that he is likely to be successful in treatment. I am more than satisfied, based on what I have seen in the last year and a half, and based on all of the information that has been provided to me, that Mr. Bays is indeed an individual who has a very strong likelihood of being able to maintain sobriety. He has been sober since August 19th of 2008. There has never been any indication whatsoever that he has slipped or been using and, again, noting the significant difference, just in his physical appearance, it is pretty obvious that there has been a marked change in his lifestyle since he began in this Court.

[7] I did want to highlight a couple of comments, in particular one of Ms. White's, who has been Mr. Bays' alcohol counsellor for a considerable period of time. She notes in her report that in her 18 years of working in the field of addiction and mental health, she has rarely seen a person so committed to the goal of complete sobriety as Mr. Bays, which I think is significant. That comment is echoed in many ways by the other individuals that have dealt closely with Mr. Bays over the last year and a half.

[8] At the end of the day, I am more than satisfied that Mr. Bays has demonstrated that he is committed to addressing his alcohol dependence, and also that he has a high likelihood of being successful in doing so over the long term. All of the information supports that, and I am of the view that it is appropriate to adopt the joint submission and to grant Mr. Bays a curative discharge with respect to the impaired driving count.

[9] The only question for me is, really, the appropriate length. There are a couple of things that I want you to understand, Mr. Bays. Firstly, what we are talking about here today in terms of a curative discharge is something that you have earned. It is something that you have demonstrated that you are a good candidate for. You would otherwise have been looking at a period of time in jail. In addition, Mr. Meredith is quite right in saying that normally our starting point for curative discharges is a three-year probationary term; that is pretty standard, but in your case we are talking about whether or not 18 to 24 months is appropriate. I am satisfied, quite frankly, that, based on what I have seen over the last year and a half, that a further period of supervision of 18 months would be sufficient to give you a very good, solid start on what I have no doubt will be a lifelong change for you.

[10] I am going to place you on probation with respect to the impaired driving count for a period of 18 months.

[11] There is also going to be a driving prohibition. The joint submission is suggesting two years. I think that is appropriate in all of the circumstances, so there will be a driving prohibition of two years from today's date. I am not certain where this falls in terms of the changes with respect to making recommendations for the Interlock

program. In the event that it is before those amendments I will, out of an abundance of caution, state for the record that I would make the recommendation that he be entitled to apply for the Interlock program within three months of today's date. That is something that is ultimately determined by the Driver Control Board, and it would have a cost to you associated with the equipment necessary to participate in that program, but what I can do is make the recommendation that you be entitled to make the application. So I am prepared to do that.

[12] There is a drive while disqualified as well for which a curative discharge does not apply, and for which we normally look at custodial terms. In this particular case, I am satisfied that it would be appropriate to suspend the passing of sentence and place you, Mr. Bays, on probation. I am going to place you on probation with respect to that particular count for a period of six months, and that will run concurrently with the longer probationary period that relates to your curative discharge on the impaired charge.

[13] So that leaves us with the conditions that need to be addressed. I am going to make the conditions on both orders identical so that they will mirror each other. I am going to follow the conditions suggested by Mr. Cairns in his second report, that being the summary of Mr. Bays' performance in the Wellness Court process. The first conditions are going to be those that I am required by law to include in every probation order. The statutory terms:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you notify your Probation Officer in advance of any change of name

or address, and promptly notify the Probation Officer of any change of employment or occupation;

In addition to those statutory terms, I am going to include the following terms:

4. That you remain within the Yukon Territory unless you obtain written permission from your Probation Officer;
5. That you report to a Probation Officer within two working days and thereafter when and in the manner directed by the Probation Officer;
6. That you reside as approved by your Probation Officer and not change your residence without the prior written permission of your Probation Officer;
7. That you abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
8. That you not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
9. That you take such alcohol and/or drug assessment, counselling or programming as directed by your Probation Officer;
10. That you take such other assessment, counselling and programming as directed by your Probation Officer;
11. That you provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this order.

I am not going to add the not driving condition that is suggested, simply because it is addressed in the prohibition.

12. Having given your consent, you are required to submit to random breath samples, breathalyzer tests, urinalysis, bodily fluid or blood tests on demand by a Probation Officer or a Peace Officer who has reason to believe that you have failed to comply with this condition.

So in some ways, it continues what you have already been doing, but it means that you do not have to come back and see me every few weeks.

[14] Any concerns with the conditions as suggested?

[15] MR. REYNOLDS: No, those are quite all right.

[16] THE COURT: Okay. I did include drugs. Sometimes we only refer to alcohol in terms of abstention and treatment, but it is not altogether unusual for somebody to replace one addiction with another, and I do not want you to go down that road. So, I am going to require abstention from both.

[17] Victim fine surcharges, any submissions?

[18] MR. REYNOLDS: No, nothing.

[19] MR. MEREDITH: Nothing further, Your Honour.

[20] THE COURT: He is employed, so I think in this particular case I will simply do the mandatory minimum amount, which would be \$50 on each count for a total of \$100. How long does he need to pay that?

[21] MR. REYNOLDS: Apparently two weeks should suffice, Your Honour.

[22] THE COURT: We will just make it one month time to pay to make sure that you have time to make the arrangements. The remaining counts?

[23] MR. MEREDITH: I believe they were stayed, Your Honour.

[24] THE COURT: Thank you. The last thing that I want to do is thank both counsel for their efforts on this file. I know there have been a lot of discussions and I think they were well worthwhile and have resolved this matter, I think, appropriately. My thanks as well to Ms. White, Mr. Cairns, Dr. Heredia and Dr. Chau for all of their efforts in providing the Court with information. The last thing that I want to say to you, Mr. Bays, is congratulations. We are extremely proud of you. I hope you are very proud of yourself as well. I must say, I think we are going to miss you around here. It has been very nice to see you and how well you have been doing over the last couple of years. So I would just like to come down and congratulate you and send you on your way, great job.

RUDDY C.J.T.C.