

Citation: *R. v. Beattie*, 2010 YKTC 40

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09-05887

09-06050

Registry: Whitehorse

Heard: Carcross

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

DUKE BODEAN BEATTIE

Appearances:

Noel Sinclair

Emily Hill

Counsel for the Crown

Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Duke Beattie is before me with respect to a number of matters to which he has entered pleas of guilty. These include one offence for driving while the concentration of alcohol in his blood exceeded the legal limit, driving while disqualified, and a failure to stop his vehicle when he was pursued by the RCMP. In addition, he has two breaches of the abstain condition of his release order occurring following the main substantive offences.

[2] The substantive offences arose on October 17, 2009. At that point, the RCMP received a complaint that Mr. Beattie had taken, firstly, the keys, and then quite clearly the vehicle, of Jennifer Atlin, that he was intoxicated and that he was driving. The police were also aware that he was disqualified from driving at this particular time.

[3] They attended at the Choutla subdivision in pursuit of Mr. Beattie. At that time, they observed him to be driving, I take it, Ms. Atlin's truck. They activated the emergency equipment and slowed to speak to Mr. Beattie. He pulled to the right around the police vehicle, took the vehicle off of the road into the bushes. He was noted to fishtail several times and to be driving erratically, including narrowly missing a number of trees. The RCMP continued in pursuit. Mr. Beattie then brought the vehicle back onto the main road. It is my understanding that this was in a residential area. There were some triplexes nearby. He then stopped the vehicle in the back yard of Mr. James' residence and was observed to hop into the back seat of the vehicle. It is also noted there was a passenger, Ms. Atlin, who was present in the vehicle at the time, who was also noted to be intoxicated.

[4] Upon attending, the RCMP noted Mr. Beattie to display significant signs of impairment including a strong odour of alcohol, slurred speech, and indeed described him as being incoherent.

[5] He was arrested, at which point he became combative and began kicking at the officers. Efforts to subdue him included pepper spray, to little effect, but ultimately they were able to subdue him and take him to the detachment, where he provided breath samples of 240 and 230 milligrams percent. It is evident in some of the description of

his behaviour at the detachment that he was quite grossly intoxicated on this particular day. I should also point out the offence occurred at 10:55 a.m., so he was driving in a residential neighbourhood in daylight hours, although it is noted that while driving erratically, his speed was noted to be relatively slow. He was released on conditions, including conditions requiring him to abstain.

[6] On November 28, 2009, the RCMP received a call that Mr. Beattie was being violent. They attended at the residence, and Mr. Beattie, who met them at the door, was noted to be, again, extremely intoxicated and again he was uncooperative, refusing to leave the residence, struggling and kicking at the officers. He was re-released, again with a condition requiring him to abstain and requiring him to abide by a curfew.

[7] On March 11, 2010, a complaint was received from Flipper's Pub in Whitehorse indicating that Mr. Beattie was refusing to leave. It appears he subsequently left on foot with his former girlfriend in pursuit. She indicated to an officer on patrol that he had her coat and purse. He was ultimately located hiding in the bed of a truck. Again, signs of intoxication were noted.

[8] Mr. Beattie comes before the Court with a significant and lengthy prior criminal record. It does include related offences. Of particular note to me, there are two prior impaired driving convictions in 2005 and 2006. He received a fine on the first and a 30-day conditional sentence order on the second. However, he also comes before the Court with four prior driving while disqualified convictions for which he has received various sentences. As his counsel points out, at least one of those appears to have

arisen as a result of some degree of confusion as to where he could and could not drive his snowmobile during the time that he was disqualified. There are, however, the three others for which there are no such explanations before me. So he clearly does have a history of failing to comply with his driving prohibition.

[9] Counsel have both recognized that, given the nature of the offences before me, there will necessarily need to be a period of custody. They are, however, fairly far apart in what they view to be the appropriate disposition with respect to Mr. Beattie in light of the offences before me and his circumstances. Crown counsel is suggesting a global sentence of 16 months. Defence is suggesting a global sentence of six months and is asking that I consider, if any additional time is required, that he be entitled to serve that time conditionally within the community.

[10] Notice has been filed and as a result there will, by operation of law, be at least a four month sentence with respect to the driving while the concentration of alcohol in his blood exceeded the legal limit, and there will, of course, also necessarily be a driving prohibition.

[11] In terms of Mr. Beattie's personal circumstances, he is 29 years of age. I have information from a number of individuals, including a former employer, a former social worker and his mother, all of whom attest to some positive characteristics with respect to Mr. Beattie. He is described by Mr. Wayne Moulton as being a good worker and committed to the work that he takes on. His mother, not surprisingly, has a number of positive things to say about him, and it is clear to me, from the information provided by her, that he is viewed as an important member of the family. I understand that this

includes herself, Mr. Beattie's six-year-old son, who is currently in Mr. Beattie's mother's care, and also a 17-year-old nephew who is in the home as well. She describes Mr. Beattie as taking his role seriously with respect to both raising his son and also his relationship with his nephew. She talks at length about the support and assistance that she receives from Mr. Beattie, particularly in light of some medical limitations that she has.

[12] I have also been advised that the family does run a camp which would be constructed in May and, I take it, would continue over the summer and would involve a number of traditional activities and is described as being a dry camp. There will also be a counsellor present at the camp for support as and where necessary.

[13] It is clear to me from the information provided that Mr. Beattie is a young man with significant addiction issues. I am advised he has taken some steps. It is clear that he had an extensive history with drugs that he appears to have come some distance in addressing, but he has continued to have a significant problem with alcohol. To his credit, he has made some steps to reach out for assistance and indeed was in the process of trying to get into residential treatment when he was more recently re-arrested on March 11th of this year. He has been in remand since that date and time.

[14] Given his history of struggling with his addiction to alcohol, and noting that both of the breaches before me are abstain breaches, I appreciate that compliance with that type of condition, when someone is actively dealing with an addiction issue, is problematic and difficult, and, for many, impossible. I view those offences as somewhat less serious than I might view other breaches in these circumstances. As a

result, notwithstanding the fact that he has a history of a number of breaches, I am satisfied that it is not necessary in these circumstances that they attract lengthy jail terms.

[15] I am going to resolve the two breaches as follows. For the breach on November 28th, I am going to credit the remand time that he has spent. At my count, it is some 13 days. There have been no submissions in terms of any enhanced credit or where he might fall with respect to the new amendments. In any event, I am satisfied that one-to-one credit is appropriate under the new amendments. So there will be a sentence of one day deemed served on that charge with credit of 13 days being given.

[16] With respect to the second, while normally there would be an increase in our standard 30-day sentence where there is a history of breaching, in this particular case I am satisfied that a sentence of 30 days is appropriate. As I said, I am taking into consideration his background, his circumstances, his aboriginal heritage, his struggles with addictions and all of the information that has been provided to me.

[17] With respect to the remaining offences, the substantive offences which, in my view, are considerably more serious, I am of the view, based on all of the circumstances, that the dominant sentencing principles with respect to those three offences, that being the driving while disqualified, the failure to stop and the driving while the concentration of alcohol in his blood exceeded the legal limit must be denunciation and deterrence. I am satisfied that that message has been clearly sent by Parliament and, as well, has been reflected in increasing sentences for impaired driving-related offences in the courts.

[18] There are a number of aggravating features with respect to these matters on the facts before me. These include the fact that the driving involved daytime hours in a residential neighbourhood. There was a passenger in the vehicle. There is no indication that there were high speeds, but certainly indications of erratic driving and narrowly missed collisions with trees, which could have resulted in injury to the passenger, at the very least. Mr. Beattie was clearly grossly intoxicated. The readings were very high, well beyond the statutorily aggravating limit. He was uncooperative and indeed aggressive and combative when arrested. About the only factor that does not fall into the aggravating category is speed; we do not have excessive speed, but we do have numerous other aggravating factors with respect to the offences that are before me. I am satisfied, because of those aggravating features, that an appropriate global sentence with respect to the remaining three counts is one of eight months.

[19] I considered the possibility of a conditional sentence. I am not satisfied that it is appropriate in this particular case for two reasons; firstly, Mr. Beattie's history of non-compliance; and secondly, the nature of the offences. I am not satisfied on the facts of these particular offences that the principles of denunciation and deterrence can adequately be met in this case with a conditional sentence, and I am not satisfied that Mr. Beattie would be able to sufficiently comply with conditions such that he would not present a risk to the community. So I am satisfied that it does need to be a custodial sentence.

[20] I am going to break it down as follows: With respect to the s. 253(1)(b), by law there must be a sentence of four months. Given the fact that there is a global impact

with respect to these three offences, I will make the sentence for that offence one of four months.

[21] With respect to the driving while disqualified, there will be a consecutive sentence of two months. With respect to the s. 249.1 offence, there will be an additional consecutive sentence of two months. Those will be consecutive to each other and to any other sentence being served, which leaves a total sentence of nine months remaining to be served. I am not satisfied, in the circumstances, that it is necessary or appropriate to attach any type of probationary term. This sentence is intended to be denunciatory and deterrent in nature and not rehabilitative in nature, because of the nature of the offences and because of, as I said, the facts of this particular case. So I would decline to add probation. There will, however, be a three-year driving prohibition.

[22] I will waive the victim fine surcharges, given his custodial status.

[23] The remaining counts?

[24] MR. SINCLAIR: Stay of proceedings.

[25] THE COURT: Thank you.

RUDDY C.J.T.C.