

Citation: *R. v. Dick*, 2006 YKTC 33

Date: 20060324
Docket: T.C. 03-01505E
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

MICHAEL WAYNE DICK

Appearances:

John Phelps

Nils Clarke

Counsel for Crown

Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Michael Dick is before me having entered pleas in relation to an offence of impaired driving causing bodily harm, driving while disqualified, failing to remain at the scene of an accident and two offences of breaching his probation order.

[2] The facts have been entered before me by way of an agreed statement of fact which in detail sets out the circumstances of the offences. It is not my intention at this point in time to cover those in detail. Suffice it say that on the night of December 16, 2005, Mr. Dick, who, at the time, was extremely intoxicated, took, without consent, the vehicle of his common-law spouse and drove for some considerable time around

Whitehorse while continuing to drink with a number of passengers in his vehicle. By my count, there appeared to be five passengers in the vehicle with him. He was driving at excessive rates of speed; he was crossing into the opposite lane and back again.

During the course of his going back and forth across the center line, he struck, head on, a vehicle coming in the other direction.

[3] There were a number of injuries suffered by a number of individuals, some of those serious and requiring that those individuals be medevaced out of the Territory. However, fortunately for all concerned, including Mr. Dick, it appears that at least modest recoveries have been made with respect to all of those injured. I do not have any information before me to suggest that there will be ongoing problems suffered by any of the victims in this particular accident.

[4] Following the accident, Mr. Dick failed to remain and disappeared up into the Hillcrest area, but was located on the 20th of December and arrested. He has been in custody since that time, some 94 days.

[5] In addition, at the time of the offences, he was on a probation order indicating that he was not entitled to drive. He was also subject to a driving prohibition for a period of 18 months. The remaining breach of probation count relates to his being intoxicated in contravention of an abstain clause of his probation order on the 9th of December, 2005.

[6] I have a joint submission before me from counsel. I also have a great deal of material that has been filed, which includes a book of authorities filed by the defence, a pre-sentence report, which had been prepared in the fall of 2005, his previous probation

order, his driving prohibition, his criminal record, a letter written by Mr. Dick, and a memorandum from the Whitehorse Correctional Centre.

[7] Mr. Dick is a 26-year-old member of the Ross River Dene First Nation.

According to the pre-sentence report, he has a grade nine education and has a limited work history because of the extensive periods of time that he has spent in jail. He is the father of three children and has a spouse who has remained supportive of him, notwithstanding a history of domestic violence and his having taken her vehicle, her new vehicle, on this particular night, without her consent.

[8] There is an indication in the pre-sentence report, as well as his letter to the Court, that at least on some level he appreciates that he has a significant problem and requires some significant help to address the problems that keep bringing him before the Court.

[9] He has a prior criminal record. On that criminal record there are numerous offences. Most important to me are that he has 25 prior process-related offences. He also has amassed, within a period of some two years, five prior related driving offences. Most notably, in 2004, he was convicted of two counts of failing to remain at the scene, one count of dangerous operation, one count of impaired driving, all of which relate to his having stolen a vehicle while intoxicated, being involved in two accidents with that vehicle, running a woman off the road, and failing to remain at the scene of those two accidents. He received a significant sentence in relation to those. Later in October of 2005, he was also convicted of driving while disqualified.

[10] So in a short period of time, he has amassed a number of driving-related offences. Most of those relate to one incident, but the nature of that incident, from a factual perspective, when I compare it to the one before me today, is extremely aggravating.

[11] There have been, as I noted, a number of cases filed setting out a broad range of sentences with respect to these types of cases. What is most important for me today is that those cases make it clear that the primary considerations, as it relates to these types of offences, for me in sentencing are the principles of deterrence and denunciation. The sentence that is given in these types of offences must make it clear to Mr. Dick and to others that this type of behaviour will not be tolerated.

[12] There are a number of aggravating factors in this particular situation: the accident itself, of course, and the injuries; the fact that the driving pattern included driving at excessive rates of speed and passing in and out of the wrong lane; the fact that there were a number of passengers in the vehicle at the time and that Mr. Dick was continuing to consume alcohol while driving; the injuries suffered, as well the fact that Mr. Dick was on probation at the time, prohibited from driving at the time, and left the scene, all of which are extremely aggravating factors.

[13] In addition, the pre-sentence report has attached to it a psychological assessment prepared by Dr. Boer. It makes it clear that Mr. Dick is at high risk to re-offend. He is also seen, because of his lack of respect for previous court orders and supervision, to be particularly difficult to manage within the community.

[14] In terms of mitigation, however, we do have a situation with an extremely early guilty plea. We have a relatively young man and I am satisfied, both with respect to the guilty plea, as well as the letter that Mr. Dick has filed, and his words before the Court today, that he is extremely remorseful for his actions and that he recognizes that he is very fortunate to be before the Court today dealing with an offence in which injuries resulted as opposed to death.

[15] He has also recognized that he is in need of some intensive treatment and has recognized that it is necessary for him to enter into the federal correctional system, such that he may be transferred to a facility that can provide him with the treatment that he so desperately needs. The report of Dr. Boer specifically refers to a program, a healing lodge within the federal system for aboriginal offenders, which he felt would be of significant assistance to Mr. Dick. Mr. Dick has expressed an interest in entering into that program.

[16] Counsel have put before me, as noted, a joint submission. They are suggesting a global sentence of three years in relation to all of the matters before me, less credit for the time that Mr. Dick has served in remand, plus a driving prohibition.

[17] There are some minor disputes between counsel, firstly, with respect to the amount of credit that should be granted in relation to the remand time and also with respect to the length of the driving prohibition. I should say first, that in my view, the joint submission, notwithstanding the minor disagreements that counsel have put before me, is entirely within the appropriate range for this type of offence and clearly meets the dominant sentencing principles which I must turn my mind to in this particular case. As

well, it would enable Mr. Dick to access the programming that he has expressed an interest in and that he so clearly needs.

[18] I am prepared to adopt the joint submission, but dealing first with the minor differences between counsel on the joint submission. With respect to the remand time, he has served some 94 days. Crown is suggesting that I credit that at one and a half to one and their calculations indicate, and they suggest, that I should give him four and one half months credit in relation to that remand time. Defence counsel has suggested that I consider one and three-quarter to one or two to one and credit him closer to six months for the remand time that he has served. There is a memorandum that has been filed before me from the facility, which does indicate that he has been in the general population. He has applied for some programming, specifically the Yukon College program. He was not able to attend, as the class was full.

[19] On my reading of the memorandum, it appears that Mr. Dick has been treated as if he were a serving prisoner in the facility, so I am not prepared to credit it him two to one. However, both in terms of calculations, ultimate calculations, I am satisfied that a credit of five months is appropriate in relation to the amount of time that he has spent in remand. I will apply that when I get to the breakdown of the -- actually, I will step back a minute. Perhaps it makes most sense for me, at this point, to deal with the specific charges and how I plan to deal with the sentences on each before I deal with the secondary question of the driving prohibition.

[20] With respect to the s. 255(2) charge, that being the impaired driving causing bodily harm, it being the most significant of all of the offences before me, there will be a

sentence of 31 months. I would ask that the record reflect that he is also being given credit for five months spent in remand.

[21] With respect to the s. 259, particularly given that he was convicted of the same offence a couple of months before this, I am satisfied that the record should reflect a sentence of six months concurrent.

[22] Similarly, with his failing to remain at the scene, given that it mirrors his behaviour on the prior driving offences in 2004, I am also satisfied that that charge should reflect a sentence of six months concurrent.

[23] With respect to the two breaches, I would direct that there be a sentence of 60 days on each of those two charges, also concurrent, such that the global sentence is one of 31 months.

[24] With respect to the driving prohibition, the initial joint submission suggested that counsel had agreed on a driving prohibition of five years. We had much discussion as it relates to the law on when the driving prohibition begins to run. I am satisfied that the prohibition commences at the time that the order is made, that being today. That being the case, Crown has suggested that there be a driving prohibition of eight years, or five years plus the number of months that he spends in custody, the 31 months. Defence is suggesting a prohibition of four years on top of the amount of time that he spends.

[25] What I am going to do is this; I think that the driving prohibition in this particular case is essential, both from a general and a specific deterrent perspective, also from a public safety perspective. I am of the view that there needs to be a prohibition in the

neighbourhood of five years once he is out. However, if there is an eight-year order, when I consider the remission time in the federal system, he is going to be doing more than five years once he is on the street. So I am going to make the total prohibition one of seven years, because I think that is closer in calculation to what will amount to a five-year prohibition once he has been released from the federal system.

[26] In his current circumstances, the victim fine surcharges are waived. Is there anything further counsel? I believe that covers everything.

[27] MR. PHELPS: No, Your Honour.

[28] MR. CLARKE: Nothing further, Your Honour.

[29] THE COURT: Thank you both for the great deal of information. I must say that it was extremely helpful in preparing for today. The last thing I want to say before we break is, Mr. Dick, I wish you the best of luck in the federal system. I urge you very, very strongly to get yourself into the programming. They have a lot that is offered. You want to take everything that you can get your hands on if you want to be coming back to the Yukon as someone that your children can be proud of, okay?

[30] Sorry, the one thing I did not think of, Mr. Clarke you had asked that I make a specific recommendation as it relates to the program that Dr. Boer had suggested. I am prepared to make that recommendation. I note that it appears to have a focus on violence which, with his history, would be beneficial for him. I suspect there is also a focus on substance abuse related issues. So I am prepared to make a recommendation that if at all possible he be allowed to go into that program.

[31] I am not going to endeavour to pronounce it on the record. Madam Clerk, it is included on page 9 and I have circled it on my copy for the purposes of the order. So I will make the recommendation that if at all possible he be allowed to enter into that program.

[32] MR. PHELPS: Thank you.

[33] THE COURT: Thank you all very much.

RUDDY T.C.J.