

Citation: *R. v. Hare*, 2019 YKTC 13

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Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REGINA

v.

PHILIP WAYNE HARE

Appearances:
Leo Lane
Gregory Johannson

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] RUDDY J. (Oral): Philip Wayne Hare appears before me for sentencing in relation to three offences to which he has entered pleas of guilty. Two are for driving while the concentration of alcohol in his blood exceeded the legal limit and one is for failing to appear.

[2] The first offence occurred on September 6, 2017. It appears that Mr. Hare, at that time, was assisting an individual who was in an overdose situation. Unfortunately, in doing so, he also made the decision to drive while under the influence of alcohol. He was noted by the police, as the manner of driving brought him to their attention. There was a stop initiated. An ASD sample was provided, which registered as a fail. He

ultimately provided two samples of his blood registering at 200 and 190 mg%. He was cooperative throughout the process. Mr. Hare was served with a notice of intention to seek greater punishment with a promise to appear for November 1, 2017, which he failed to do.

[3] He was apprehended July of 2018, when he came to the attention of the police as a result of an expired licence plate. When the traffic stop was initiated, the name provided gave the police the information in relation to the outstanding warrant.

[4] During the arrest, a smell of alcohol was noted and an admission was made with respect to drinking. An ASD sample, again, resulted in a fail. Samples were provided at 220 and 200 mg%. Again, Mr. Hare was cooperative.

[5] I should say also that both offences occurred later in the evening or in the early morning hours.

[6] Mr. Hare comes before the Court with a prior criminal record. It is a lengthy one, but it has some interesting gaps in it. He does have three prior offences related to impaired driving — one in 1993, one in 1995, and one in 1999 — as well as multiple breach offences.

[7] His criminal record dates back to 1980. There is a significant gap between 2001 and 2011, when Mr. Hare was involved in what appeared to be a fairly stable and healthy relationship. He has had eight convictions since then. Five of those have been for breaches, although there has been a gap of some five years since his last offence.

[8] I do have a Pre-Sentence Report (“PSR”) before me, which provides detailed information on his background and circumstances. I will not repeat all of it, for the purposes of this decision; however, it was helpful for me in terms of understanding your circumstances, Mr. Hare.

[9] There are positives in those circumstances. You have a very good employment history up until the last few years with the loss of your licence. By and large, you have had a good reputation as a strong worker. You seem to struggle more when you are in relationships where abuse of substances is significant on both sides. You seem to do much better, I think, when you are on your own or when you are in a healthy relationship, like the one with Ms. Casson, and your record seems to reflect those stable periods in your life.

[10] From my perspective, the PSR does highlight what I would consider certain *Gladue*-related factors. I understand your very strong views on that part of your heritage, which is indigenous, and your concern that it be seen as an excuse for your behaviour, because you do not see it as an excuse. At least, that is how it was presented to me in the PSR.

[11] Nonetheless, there are factors in your background, particularly in your mother's history, that do provide a connection to how your own life has evolved, in particular that period of time when you were small and when your parents were both abusing substances. Being exposed to that at an early age tends to affect the way we look at alcohol later.

[12] Clearly from your teens on, alcohol has been something that you have struggled with. I am considering that as well because I think that is important in understanding how we got here.

[13] Essentially, counsel are in the same neighbourhood as to what the appropriate sentence ought to be.

[14] There was a clear indication in the PSR that Mr. Hare had concerns about probation and the likelihood of that setting him up, as he does not do well in authoritarian kinds of relationships where he is being told what to do. He indicated today that he could see some potential value and advantage in probation if it was a relationship where he was working well with the probation officer and felt supported.

[15] I think there, nonetheless, remains a concern about whether or not that kind of relationship will develop, as you would not necessarily be able to dictate what probation officer you are assigned. You might be able to work well with one but not another. I think your underlying concerns about the potential for future breaches is something that everybody here today, including me, is very mindful of.

[16] All of that being said, I am satisfied that the range of sentence that is being put forward to me today, that being a global sentence of eight months without any probation, is appropriate. It will give you time while you are in the facility, firstly to have a break from your existing relationship, which is a problematic one; to make some personal choices about how you want to handle that and your own life; to get some tickets to increase your employability, which I know is very important to you; and also, perhaps, to get some substance abuse programming.

[17] Once you finish your sentence, you would serve about two thirds of it, assuming that your behaviour at the facility is fine — and I expect it will be — and then, at that point, you would be free to make your own choices and the changes that you have expressed that you want to make. That makes some sense to me.

[18] The real question is how I frame the sentence in terms of concurrent or consecutive service.

[19] For the purpose of the decision, I will quickly restate what I said earlier. I am required by law to impose sentences of four months on each offence because of the notice that has been filed. I cannot go lower than that.

[20] Whether the impaired sentences are consecutive or concurrent, in my view, the concern with the defence proposal of doing six months concurrent on each charge would be that I think your record then reflects a sentence that is too high, given the gap in your record between these offences and the prior impaired-related offences. I also have some difficulty with considering the two offenses as being any kind of continuing enterprise to support concurrent service.

[21] However, when I consider the fail to appear, I would agree with both counsel that that sentence being served consecutively — even though it is one I would normally order to be served consecutively — would push us into the area where the totality of the sentence would be too long.

[22] Accordingly, I am going to impose sentences of four months on each of the two offences for driving while the concentration of alcohol in your blood exceeded the legal limit. They will be served consecutively to each other.

[23] On the fail to appear, the Crown has suggested 60 days. I do think it is problematic that we have a fail to appear that then led to not just an arrest but to another impaired, justifying a longer than normal sentence.

[24] In consideration of the seven days that you have already spent in pre-trial custody, I am going to make the sentence on that a 45-day sentence instead of the 60 days that has been suggested. This will be served concurrently, to address the issue of totality.

[25] So, you are to serve one sentence for impaired driving and then the other sentence for impaired driving, but you will be serving them at the same time as your fail to appear sentence. The total amount of time that you are to serve will amount to eight months less whatever time off there is for good behaviour.

[26] Once you are done that, you are done, except for the driving prohibition. I am required to impose a minimum driving prohibition of three years on each of the offences. Given your work history and the importance of a drivers' licence to that work history, I am going to make the two driving prohibitions concurrent to each other, resulting in three years total and not six. I am then going to further reduce it by the past six months that you have already been, effectively, on a driving prohibition. So, instead of 36 months, you would have 30 more months on the driving prohibition. That starts upon completion of your custodial sentence.

[27] Basically, you serve two thirds of an eight-month sentence and then you have your driving prohibition to worry about. Hopefully, you will be able to find work that does not require driving until that is completed or at least work that can get you to the position of being able to install the interlock. At that point, the hope is that you will be able to make the choices that you want to make and we will not see you back before the Court.

RUDDY T.C.J.