

Citation: *R. v. Jackson*, 2009 YKTC 114

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Docket: 07-10160
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07-10160B
07-10160C
07-10160D
07-10160E
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

STACEY JACKSON aka STACEY PORTER

Appearances:
Peter Chisholm
Nils Clarke

Appearing for Crown
Appearing for Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Stacey Jackson, also known as Stacey Porter, is before me. She has entered pleas of guilty to four counts. The first of those is an impaired causing bodily harm, arising on the 13th of December 2007. Subsequent to that offence, there are three s. 145s to which she has entered pleas of guilty; one fail to appear, one fail to report and one breach of an abstain condition.

[2] The most serious of the offences, as indicated, arose on December 13, 2007, in Watson Lake, at which point the RCMP were called to a single vehicle accident at

approximately 3:00 p.m. They attended the site to locate a blue pickup truck which had gone off the road and rolled several times. Three individuals were in the vehicle. Ms. Jackson was noted to be the driver of the vehicle. There were two passengers. All three individuals were ejected from the vehicle as they were not wearing seatbelts.

[3] I understand Ms. Jackson suffered facial injuries, and, unfortunately, the female passenger and owner of the vehicle, Mary Johnny, suffered serious injuries, which included multiple fractures to her femur, her humerus, her clavicle and to the L2 area of her spine. I have been provided with some medical information, from approximately ten and a half weeks after the accident, which indicated that at that point in time Ms. Johnny could bear weight on her right leg and partially bear weight on her left. The prognosis was that she should be able to start walking with crutches and should be able to bear full weight on both legs by 12 weeks. There is no indication of long-term problems before me at this point in time, but, nonetheless, serious injuries.

[4] At the site of the accident the police noted empty beer cans. They also noted Ms. Jackson to exhibit obvious signs of impairment, including a strong odour of liquor. A blood demand was made and the sample that was provided was tested at 187 milligrams percent.

[5] Ms. Jackson was released by the RCMP on conditions. She was required to appear in court on April 7, 2008, and failed to do so.

[6] Her conditions of release also included conditions that she report, that she abstain and that she abide by a curfew. She was directed to report to a bail supervisor on September 29th. She failed to report on that date. She left a note on October 14th

indicating that she would report the following Monday. She did not do so, and apparently at that point contact was lost with her altogether. She was picked up in December in an intoxicated state.

[7] On April 14, 2009, the Emergency Medical Services were called as Ms. Jackson had fallen and broken her ankle. The police attended and noted her to be under the influence of alcohol, in breach of her abstain condition. Again, on September 6, 2009, she was arrested by the police, under the influence of alcohol, after her curfew.

[8] She comes before the Court with an extremely limited criminal record, which includes a breach for which she received a small fine and a theft under for which she received a conditional discharge.

[9] I have the benefit of a pre-sentence report, although it was prepared for July 3rd. But it does provide a fair amount of information with respect to Ms. Jackson and her background. She is currently 34 years of age, a member of the Kaska Dena First Nation. It appears that she has somewhat unfortunate circumstances, having grown up in a situation in which she was abused, both physically and emotionally, and often neglected.

[10] There are considerable issues with respect to the abuse of substances within both her own life and her family, although, to her credit, she appears to have recognized the need to start to address some of those issues. It is my understanding, while in custody she has been both attending school and attending AA regularly, and also completed the Higher Spirit Program.

[11] I accept, from the comments of her counsel as well as the information in the pre-sentence report, that she is extremely remorseful for the circumstances which bring her before the Court today. There is clearly an indication in the pre-sentence report that she was very concerned about the impact on Ms. Johnny. The two of them, apparently, are cousins, and that was of considerable concern for her.

[12] I have before me a joint submission which is on the lower end of the range of what one might expect for these offences, but in light of all of the circumstances, both of the offence and the offender, I am satisfied that it is appropriate in this particular case and I am prepared to adopt that joint submission.

[13] It is my understanding that Ms. Jackson has the equivalent of three months in remand once one and a half to one credit is given. What I am going to do is credit one month of that pre-trial custody to each of the three s. 145s. So they will each have a sentence of one day deemed served by her attendance in court today and the record will reflect a credit of 30 days on each of those.

[14] Which leaves the most serious of the offences, the s. 255, for which there will be a sentence of four months in custody, consecutive to any other sentence that she may be serving. That will be followed by a probation order of 12 months which will have, Ms. Jackson, the following terms and conditions:

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 the Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of

employment or occupation;

4. That you take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
5. That you take such other assessment, counselling and programming as directed by your Probation Officer;
6. That you provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this order.

[15] Is there a concern about any additional conditions?

[16] MR. CHISHOLM: No. You did include a reporting condition?

[17] THE COURT: Sorry. No, I did not, actually. Thank you. It will be required:

7. That you report to a Probation Officer immediately upon your release from custody, and thereafter when and in the manner directed by the Probation Officer.

So you need to report to the Probation Officer and take whatever programming they tell you to.

[18] In addition, there is going to be a driving prohibition of two years. So you will be prohibited from operating a motor vehicle on any public road or highway for a period of two years.

[19] I will waive the victim fine surcharge in your current circumstances.

[20] That leaves me with the restitution. There is information provided that both Ms. Johnny and the insurance company are out a considerable amount of money, as the truck was a write-off. The deductible, apparently, was \$2,500, an expense that had to be borne by Ms. Johnny, and I have no difficulty whatsoever in making a stand-alone restitution order in the amount of \$2,500, to be paid into the court in trust for Mary Johnny.

[21] That leaves me with the somewhat more complicated issue of the insurance company. The sum that was expended by the insurance company is some \$19,573.60. There are a number of concerns that I have with respect to an order requiring her to pay that sum of money. Mr. Clarke is quite right. There is, firstly, a philosophical question as to what the purpose of insurance is. But in this particular case I think the question is answered simply on the basis of the fact that I am not of the view that she is, at any time in the foreseeable future, going to have the ability to pay that sum of money. So while I do feel strongly that she ought to be paying the restitution to Ms. Johnny, I am going to decline to make the order to the insurance company on the circumstances of this particular case.

[22] So, Ms. Jackson, I want you to make every effort to pay the money back to your cousin, but I am not going to order that you pay the money back to the insurance company, which is a considerable sum of money. So by making that decision, I am hoping that you appreciate you are getting a significant break --

[23] THE ACCUSED: Thank you very much.

[24] THE COURT: -- and that you are going to make absolutely every effort to make sure that your cousin gets paid.

[25] Anything further?

[26] MR. CHISHOLM: No, Your Honour. I'll direct a stay of proceedings with respect to the outstanding charges.

[27] THE COURT: Thank you very much. My thanks to counsel for their efforts in resolving this matter, and particularly to you, Mr. Clarke, for stepping in. I think it was of significant benefit to Ms. Jackson. Good luck to you, Ms. Jackson.

[28] THE ACCUSED: Thank you.

[29] THE COURT: Sorry, Madam Clerk just asked about the probation. I indicated I just wanted it attached to the s. 255. I did not believe it was necessary to attach it to the s. 145s.

RUDDY C.J.T.C.