

Citation: *R. v. Leiske*, 2009 YKTC 28

Date: 20080612
Docket: 07-00265
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

SHAYLA CAIT LEISKE

Appearances:
Melissa Atkinson
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Shayla Leiske has entered a plea of guilty to a charge of dangerous driving causing bodily harm.

[2] The crime occurred on the 10th of June 2007, in the early hours of the morning. Ms. Leiske was operating her motor vehicle on Second Avenue here in Whitehorse, Yukon. Ms. Leiske's vehicle and another vehicle sped away from a traffic light on Second Avenue, weaving between the lanes. As the vehicles proceeded northbound, they approached a sharp corner on Second Avenue where it turns to the west. The corner has a posted speed limit of 40 kilometres per hour.

[3] Once she had started around the corner, Ms. Leiske attempted to change lanes, but owing to excessive speed, later calculated to be approximately 76 kilometres per

hour through accident reconstruction, Ms. Leiske lost control of her vehicle. It swerved into the oncoming lane and collided head-on with the vehicle driven by Patricia Germain.

[4] As a result of this collision, Ms. Germain suffered serious fractures of her leg and ankle. Since the accident she has endured long and painful periods of hospitalization and rehabilitation, as she so vividly described in her victim impact statement. She has also suffered permanent disability and has had, I think can be fairly said, a very difficult time in dealing with the consequences of the accident. Fortunately, Ms. Germain's three children, who were also in the vehicle, did not suffer serious injury.

[5] Mr. Randy Butler was the passenger in Ms. Leiske's vehicle and, although the extent of his injuries was not described to the Court, it was indicated that he was unconscious after the accident. It can be gathered from that that there were certainly some consequences to Mr. Butler.

[6] Ms. Leiske herself did not fare very well either. She received an injury to her foot. More seriously, Ms. Leiske, who was pregnant at the time, suffered a miscarriage.

[7] There is no evidence that alcohol or drugs were a factor in the incident.

[8] Ms. Leiske is 21 years of age. She has entered a guilty plea and although the plea did not come at a particularly early date, having regard to the fact that the incident complained of happened almost exactly a year ago. I am satisfied from what defence counsel has indicated to me that there were valid reasons for the delay in entering the plea.

[9] Ms. Leiske has no criminal record prior to this. She has a supportive family and, as indicated in the pre-sentence report, it appears that she is at a low risk to reoffend.

All of these are factors in Ms. Leiske's favour.

[10] On the other hand, of course, she has committed a serious crime which had extremely serious consequences. Indeed, dangerous driving causing bodily harm is an indictable offence for which the maximum sentence is one of ten years imprisonment.

[11] In sentencing in cases of this kind the courts have almost invariably imposed custodial sentences, even where, as here, the offender has no prior record. In my view, no case has been made out to do otherwise in these circumstances. The only serious issue before me is whether or not the sentence can be served conditionally.

[12] In that regard, Ms. Leiske, in my view, presents as a particularly good candidate. She has a stable and supportive family and residence. She has presented no problems whilst on bail and was fully cooperative and compliant during the preparation of the pre-sentence report. She is, as I have already said, reportedly at low risk to reoffend. In my view, the public safety would not be unduly compromised by allowing her to serve her sentence conditionally.

[13] As for the matter of deterrence, I, of course, keep in mind the directions of the Supreme Court of Canada in *R. v. Proulx*, [2000] S.C.J. No. 6. But in this case, it is also worth noting that the offender herself suffered serious consequences for her actions, and no doubt that has had a substantial deterrent effect on her.

[14] In the result, Ms. Leiske, you are sentenced to a period of imprisonment of one year. That sentence, however, will be served conditionally subject to the following terms:

1. You will keep the peace and be of good behaviour.
2. You will report to the court as and when required.
3. You will report within two working days to a conditional sentence supervisor and thereafter as, when and in the manner directed.
4. You will advise the conditional sentence supervisor in advance of any change of name of address and promptly notify her of any change of occupation or employment.
5. You will remain within the jurisdiction of the court unless given permission by the conditional sentence supervisor to go outside of the Yukon.
6. You will reside where the conditional sentence supervisor will direct.
7. You will be in your place of residence, subject to a curfew, between the hours of 8:00 p.m. and 7:00 a.m. for the first four months of the order, and from 10:00 p.m. to 7:00 a.m. thereafter for the remainder of the year. That curfew is subject to being broken only in the case of medical emergency or with the prior permission of the conditional sentence supervisor, and I give her permission for the purposes of employment or otherwise as she sees fit. You will present yourself at the door or answer the telephone for curfew checks which may be made from time to time, and your failure to do so will be a presumptive breach of the conditional sentence order.
8. You will take such assessment, counselling and programming as directed.

9. You will have no contact, directly or indirectly, or communicate in any way with Patricia Germain.
10. You will perform 50 hours of community work service as directed by your conditional sentence supervisor or her designate, this work to be completed within six months.
11. You will successfully complete a driver's education course as directed by your conditional sentence supervisor and will provide the sentence supervisor with all necessary details concerning your efforts in that regard.
12. You will make all reasonable efforts to find and maintain suitable employment and again will provide your sentence supervisor with all details regarding your efforts in respect to seeking and maintaining employment.
13. You will provide your sentence supervisor with consent for release of information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to participate in pursuant to the conditional sentence order.

[15] In my view, it is not necessary that there be a probation order extending beyond the period of the conditional sentence order.

[16] Additionally, you are prohibited from operating a motor vehicle anywhere in Canada for a period of 18 months.

[17] You will also pay a victim surcharge of \$100.

[18] MR. COFFIN: Two weeks time to pay?

[19] THE COURT:

Fourteen days time to pay.

FAULKNER T.C.J.