

Citation: *R. v. McLay*, 2005 YKTC 82

Date: 20051202
Docket: T.C. 05-00290
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

JAMES GEORGE MCLAY

Appearances:
Kevin Drolet
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): James McLay is before me, having entered pleas of guilty in relation to two offences for driving while over .08 and one offence for driving while disqualified, contrary to the *Motor Vehicles Act*, R.S.Y. 2002, c. 153.

[2] The first of the impaireds arises on the 19th of May, 2005. The police responded to a civilian complaint of an impaired driver and located Mr. McLay to be driving his vehicle northbound in a ditch at 70 kilometres per hour. He was stopped by the police and when he exited the vehicle he was noted to be weaving and there was a strong odour of liquor on his breath, as well as open liquor in the vehicle. He was returned to the detachment and provided a sample of 160 milligrams percent.

[3] As a result of that, I am assuming, he was disqualified from driving, but on the 14th of July, the police were operating a check stop. Mr. McLay was noted to pull a U-turn prior to the check stop. He was followed by the police and stopped. They noted indicia of impairment. He provided a sample into a roadside screening device, which registered a fail. He was then returned to the detachment and provided a sample of 180 milligrams percent. As noted, at that point in time he was disqualified from driving.

[4] He has five prior related offences, the most recent of which was in March 2000, for which he received three months in jail and a driving prohibition of 15 months. Prior to that, the most recent was in 1995. So, as indicated by his counsel, he is able to maintain sobriety for some periods of time, as indicated by the gaps in his record.

[5] The Crown file is endorsed with a position of 18 to 24 months. Crown is also seeking a driving prohibition of seven years.

[6] Mr. McLay is 45 years of age, born in Ontario, but has been in the Yukon for the past 14 years. Of note to me, he was in a common-law relationship for some time, but it appears that his spouse, unfortunately, passed away approximately a year ago. This caused him considerable distress and resulted in his increased use of alcohol and does, to some extent, explain these offences which are before the Court.

[7] Defence has provided a number of cases. Three of those from the Yukon suggest a range of nine to ten months for individual offences; however, we do have two offences before the Court, but considering the totality principle, I am satisfied that it is appropriate to resolve these matters by way of the position that is put forward by defence.

[8] Accordingly, with respect to the first offence, there will be a sentence of five months. With respect to the second offence there will be a sentence of seven months consecutive. There will be a driving prohibition of seven years and with respect to the -- any submissions, Mr. Coffin, on the s. 266?

[9] MR. COFFIN: No.

[10] THE COURT: On the s. 266, Crown is simply seeking the minimum fine of \$500. Accordingly, there will be a fine of \$500. Time to pay on the fine?

[11] MR. COFFIN: I suggest a year, under the circumstances.

[12] THE COURT: Thank you. Any issue?

[13] MR. DROLET: Crown has no issue.

[14] THE COURT: Victim fine surcharges are waived.

RUDDY T.C.J.