

Citation: *R. v. Redies*, 2009 YKTC 85

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09-00216

Registry: Whitehorse

Heard: Ross River

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Barnett

REGINA

v.

VANESSA MARY REDIES

Appearances:

Kevin Komosky

Colleen Harrington

Counsel for Crown

Counsel for Defence

REASONS FOR SENTENCING

[1] BARNETT T.C.J. (Oral): Ms. Redies, over the years a great many people have approached me from time to time and said, "Judge, I wouldn't want your job for anything." Of course, I do not feel quite that way about it, but there are times when the work of judges leaves them thinking that, "Why would I ever be doing this?" I would not want to say that judging is fun, ever, but there are times when you just cannot feel happy about what you have to do, and this is one of those times.

[2] You are a young woman. I believe you will be 22 this coming December. You are an aboriginal woman. Your home is the community of Ross River.

[3] I have been judging in the Yukon since 1981. I have come to Ross River on previous occasions. I know something about this community. I have been to, I think, all of the other small communities in the Yukon also. I understand that, as Ms. Tom eloquently told me earlier this afternoon, there are particular troubles in this community, and perhaps an unusual number of traumatized individuals call this community home. I listened to Ms. Harrington when she told me something of the difficulties in your life, and those difficulties are commented upon by Ms. Comin in her excellent and very helpful pre-sentence report. The observations of the justices presiding in the Supreme Court of Canada in *R. v. Gladue*, [1999] S.C.J. No. 19, are pretty firmly in my mind on an occasion like this.

[4] Having said all of that, Ms. Redies, as you well know, you are appearing in court this afternoon to be sentenced on some very serious matters. The present offences follow the drinking-driving offence for which you were sentenced here in Ross River in September of 2006. The fine on that occasion was \$600, and you were placed on probation for 12 months and prohibited from driving for two years. You should not have been driving in any event. You have never had a driver's licence, as I understand matters. In 2007, in November of that year, there was a conviction for breach of the probation order. That is a bit of background that is not specifically commented upon in Ms. Comin's report.

[5] I am not going to say a great deal about the matters that are the subject of

specific comments in Ms. Comin's report. I have read it more than once. I have read it carefully. Counsel have commented upon some of the things appearing in that report this afternoon. It is acknowledged to be a substantially correct report and I simply do not think it is necessary to review what is there.

[6] But the matters that you are to be sentenced for this afternoon, Ms. Redies, start in June of 2008; impaired driving causing bodily harm and driving while disqualified. These are indictable offences to which you pled guilty. Very briefly, in the early morning hours that day there was a complaint of a motor vehicle accident. Three persons had been in the vehicle that you were driving. It was your mother's truck. The three of you were injured. As I understand it, yourself and Mr. Ladue sustained injuries requiring that you be medevaced to Whitehorse. Your injuries were serious. Mr. Ladue's injuries were more serious. While I do not have a formal medical report concerning Mr. Ladue's injuries, Constable Aubin says that Mr. Ladue is back in the community and appears to be living a normal sort of existence. But his injuries, and yours also, were serious injuries. The old truck was a total write-off. You had gone off the road. It had flipped. You had been drinking vodka and beer. Blood samples were taken at the nursing centre here in Ross River and analyzed at 0.229; basically a 0.23 reading. That is extremely high.

[7] On the 8th of September, somebody called the RCMP detachment in Ross River to complain about your driving. The police found you driving on the highway about three kilometres from Ross River. You were stopped. You were clearly drunk. On that occasion, your low breathalyzer reading was 0.28. You were still prohibited from driving by reason of the order that had been made in September of 2006.

[8] When you were released on the 8th of September you signed an undertaking promising not to drink. There were a number of occasions when you failed to comply with that order, and you have pled guilty to one charge, that on the 12th of December 2008 you were in breach of that undertaking. On that occasion, about 9:45 p.m., there was a complaint. You were found at a residence. You were drunk.

[9] Then most recently, on the 10th of June this year, you were driving again. The circumstances of that offence: At 6:50 p.m., Constable Aubin saw you driving an ATV, an all-terrain vehicle, here within the Ross River community. Of course, in this community, many people drive around on ATVs, which are motor vehicles. It might not happen in Vancouver, but it does here. It might not happen in Whitehorse so much, but it does here. You were stopped. You failed a roadside test. Both your breathalyzer readings were 0.26.

[10] All of the matters, save the offences on the 29th of June 2008, are summary matters.

[11] Crown counsel has suggested a term of imprisonment, perhaps between 14 and 16 months total. Ms. Redies, I am going to tell you that in my opinion, in my belief, other Crown counsel might very properly have suggested a longer period of imprisonment. I am telling you that I do not think that Mr. Komosky has reached for an unreasonably long period of imprisonment. I am not certain that you will agree with that, of course, but I think if this matter were to be placed on the desks of the judges in the Court of Appeal that they would say that Mr. Komosky's submissions were fair and reasonable. Ms. Harrington has quite properly and fairly said that perhaps in your

circumstances something somewhat less would be sensible.

[12] I am going to firstly say that I am absolutely satisfied that these circumstances simply do not, in practical terms, permit a conditional sentence. Mr. Komosky says that, in legal terms, the impaired driving causing bodily harm does not permit a conditional sentence. I think he is right, but in practical terms he, for certain, is right.

[13] Ms. Redies, I have never told anybody that they were going to jail because it would be a good and useful experience for them. I think in your case a term of imprisonment is necessary. I have not overlooked the fact that you are employed at the present time, a dry camp job, and I have not overlooked the fact that the Ross River Dena Council is supportive of you. They have both provided letters. Those were useful and I have not overlooked them, but I do hope that something good may be able to happen while you are at the correctional centre.

[14] For the offences on the 29th of June 2008, on the impaired causing bodily harm charge, there will be a sentence of six months; on the driving while disqualified charge, one month concurrent. Those are the indictable offences. For the offences on September 8, 2008, over 0.08 and driving while disqualified, two months consecutive on the over 0.08 and two months concurrent on the driving while disqualified. For the offence on the 10th of June this year, over 0.08, four months consecutive. For the breach of undertaking charge on the 12th of December, 2008, one month concurrent. The terms add up to 12 months, which is less than what Mr. Komosky was suggesting, and I have said that his submissions, I think, were fair.

[15] You will be on probation for a period of six months following your release. It is

not a long and complicated probation order, but the terms are perhaps more demanding than some other probation orders are. I do not believe that anything more could hope to be accomplished in 12 or 18 months than can be accomplished, hopefully, in six months.

1. You will be required to report forthwith upon the order coming into effect to a supervising probation officer --

It may be Ms. Comin; it may be some other person, but you will be required to report to that person forthwith, right away when the order comes into effect.

-- and thereafter as and when directed by the supervising probation officer.

2. For the first three months of this order you will be under house arrest terms.

And they are meaningful house arrest terms. This means that:

You must be in your place of residence, in the community of Ross River, continuously each day, excepting only that you can be away from your home each day between the hours of 11:00 a.m. and noon; and second, you may be away from your home as may be necessary to attend a treatment program or counselling specifically approved by your supervising probation officer, provided that such a treatment program or such counselling is in Whitehorse or out of the Yukon Territory.

[16] MS. HARRINGTON: But not for work?

[17] THE COURT: Not for work, no. House arrest. The jail term is

shorter than I think it might otherwise be, but in my experience, so-called house arrest orders are often virtually meaningless because they have so many exceptions in them that no probation officer and no police officer can really make them work, and there is always some reason to be out of the house. If Ms. Redies would prefer to spend a longer period of imprisonment in Whitehorse, then I could perhaps revise the probation order, but I think that the probation order is a more effective way of accomplishing some useful things. Without ordering Ms. Redies to get out of town to go to a treatment centre or to go for some specialized counselling, this I think may encourage her to do that.

[18] NICOLE COMIN: May I suggest a condition:

3. To reside as directed by the probation officer.

As well?

[19] THE COURT: Yes.

[20] NICOLE COMIN: Thank you.

[21] THE COURT: Thank you. That will be a condition of the probation.
Thank you, Ms. Comin.

[22] If she remains in Ross River, and under real house arrest terms, people here in Ross River will know that that is what is happening. Mr. Komosky suggested that a message has to be brought home to people in the community, and this may go some little distance, at least, to accomplish that. If she can get some counselling here in Ross River, the counsellor can come and visit her at home. But no, the house arrest terms;

house arrest terms in probation orders are sometimes acceptable and proper and useful, and I believe that rather than spending more time at the correctional centre in Whitehorse, that that is a better way to do things, I hope. If she goes to a treatment program or goes for some good counselling in Whitehorse, then she is not under such restricted terms. She has got to reside as directed, but she is not under the house arrest terms if she is away. Ms. Comin understands that perfectly well and I am sure that Ms. Redies will also.

[23] Ms. Redies, there is an order that you are prohibited from operating any motor vehicle on any road, street, highway or other public place. This order covers all of the drinking-driving offences and the driving while disqualified offences. You are prohibited until the 8th of July 2013.

[24] Ms. Redies, I am sure you understand but I am going to say it anyhow, that with your record, if you get behind the wheel of a motor vehicle, including an ATV, including a snow machine, and you get caught by the police, you are going to be going back to jail for a significant period of time; not ten days or anything like that; in the order of a number of months. You just must not drive. It is a risk that you cannot take. It is a risk that you cannot subject other people to. You must not drive, and that is an order that you must sign along with the probation order.

[25] I am going to ask the court clerk, would it make sense, perhaps, Ms. Redies could sign the probation order and the driving prohibition order in Whitehorse tomorrow, or can you get it done now?

[26] MADAM CLERK: I can get it done now.

[27] THE COURT: Is that what you would prefer?

[28] MADAM CLERK: Yes, sure.

[29] THE COURT: Is there anything more, Ms. Harrington, Mr. Komosky? Did I leave anything out? I do not believe so.

[30] MR. KOMOSKY: No, I think that covers it, Your Honour.

[31] THE COURT: Ms. Redies, just one other thing. When you are on house arrest, do not bother asking Ms. Comin, "Can I get permission to go to a dance; can I get permission to go curling; can I get permission to do this or that." You are under house arrest terms and Ms. Comin cannot release them. If you have to be medevaced to Whitehorse, of course, that is another story. But you have got an hour out each day. You do not have to account to anybody for that. But Ms. Comin cannot give you extensions; Constable Aubin cannot give you extensions. It is house arrest, and it means you are home 23 hours a day, period, no exceptions other than arranging with Ms. Comin to do something more useful.

[32] So are we adjourned, or is there still something left on the list?

[33] MADAM CLERK: Just the Robert Dick matter, which is motor vehicles.

[34] MR. KOMOSKY: Well, there's the remaining counts, Your Honour.

[35] THE COURT: Yes.

[36] MR. KOMOSKY: That the Crown would seek to withdraw. On this matter I have specific instructions from the Territorial Crown to act as agent, and would

also apply to withdraw the one s. 266 ticket.

[37] THE COURT: Thank you very much.

BARNETT T.C.J.