Citation: *R.* v. *Taylor*, 2007 YKTC 53

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Docket: T.C. 06-11023
06-11031
Registry: Dawson City

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Lilles

REGINA

v.

ARTHUR TAYLOR

Appearances:
John Cliffe — Counsel for Crown
Nils Clarke — Counsel for Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): This is the matter of Arthur Taylor. He has pled guilty to an offence contrary to s. 259(4)(a) of the *Criminal Code*, that is to say he was operating a motor vehicle while disqualified as a result of a previous order by this Court.

[2] The order of the Court was made in 1997 in relation to two convictions. At that time he was convicted of driving while his ability to do so was impaired, and causing the death of another person, an offence contrary to s. 255(3) of the *Criminal Code*. He received a sentence of four years incarceration and he was prohibited from driving for a

period of ten years. At the time of this offence he was also disqualified from driving and received a sentence of one year concurrent.

[3] The circumstances, as agreed to by counsel, are fairly straightforward. A citizen of Dawson observed Mr. Taylor driving on June the 25th and on June the 26th, 2006, being two separate occasions. On the first day, he was observed driving to the ferry at approximately 8:40 in the morning. On June 26th, he was driving the same road, at the end of the day, around 4:30 in the afternoon. The citizen called the RCMP.

[4] Mr. Taylor's explanation was that he lived some distance, I understood around eight kilometres, west of the ferry. His wife's car, with an automatic transmission, was broken. She could not drive a standard shift, so he drove her to and picked her up from the ferry on June 25th and June 26th. She worked in town and obviously had to get to work.

[5] There are a number of aggravating factors in this case. I will list them fairly briefly. First of all, the order that was breached related to a very serious predicate offence, impaired driving causing death. Indeed, in terms of offences in the *Criminal Code*, this is one of the more serious ones. I will come back to talk about the significance of the serious predicate offence, in part because Mr. Clarke, on behalf of his client, suggested that that should not be a significant or a major factor in my sentencing. It is an aggravating factor that this happened not once, but happened twice in a period of 24 hours, on two separate days. It is an aggravating factor because the evidence that was tendered indicated that he had been warned by a neighbour earlier

not to drive and the evidence was that he responded to the effect of "I don't drive often," or "I drive rarely."

[6] Mr. Cliffe suggested that this response, and his other conduct related to this case, suggests that Mr. Taylor did not take the court order seriously. I think there is some merit in that submission.

[7] I earlier described briefly the circumstances that led to his driving. From a family perspective, I understand the reason, but it falls far short of pressing circumstances that could serve to mitigate the sentence, and certainly it falls way short of an emergency that would constitute a defence of necessity, and, properly, that defence was not put forward.

[8] Mr. Taylor's related record is an aggravating factor. He has a total of five drinking and driving convictions, the first in 1983 and the last in 1997, being the very serious one I referred to earlier, being the predicate offence to the matters before the Court today. He also has previous breaches of court orders, of which the driving while disqualified conviction in 1997 is perhaps the most significant. There is also a fail to comply with a recognizance in 1996, for which he received a $300 fine. While relevant, I place little weight on that conviction.

[9] In my view, these factors and these circumstances raise the following sentencing principles. There is an issue of specific deterrence with respect to Mr. Taylor. There is also, in this case, for the reasons I indicated at some length in my discussion with counsel during the hearing, a concern with respect to general deterrence and denunciation. This kind of order, unlike many other court orders which are monitored by

the Court, is usually enforced only when a person is apprehended or observed, either by the police, and, on occasion, by a citizen who reports it. It is therefore obvious and apparent to me that only a subset of this offence actually results in apprehension and conviction. It is very important, then, to send a strong message to individuals in the community that court orders like this can, and will be, taken seriously by the Court if they are breached.

[10] I would add another relevant consideration. As I mentioned, Mr. Taylor, when he was sentenced in 1997, received a one year concurrent sentence for driving while disqualified at that time. The reason for that was two-fold. It was concurrent because, with respect to the major offence before the Court, he had received a four year sentence, and taking into account all of the circumstances and the totality principle, it was felt that that was an appropriate sentence.

[11] But there was a second reason for the sentencing being a one-year sentence. It was to send a very clear message to Mr. Taylor how serious the Court considered this offence. In other words, it was one year for driving while disqualified. The message the Court intended to convey was that this is very serious, and this is the kind of sentence he can expect if he breaches this order some time in the future. It was meant to give Mr. Taylor a very strong signal how important it was to comply with this order.

[12] Mr. Clarke was of great assistance to the Court and on Mr. Taylor's behalf, by setting out numerous mitigating circumstances, including those related to his personal circumstances at the current time. He has been in full-time employment with the IGA store in Alberta.

[13] Mr. Taylor is 61 years of age and that his ability to get other jobs, in the event of an incarceral sentence, would be difficult. It is obvious to me that Mr. Taylor wants to get in as many years as he can to generate money for retirement, and that is also something that I am cognizant of and have addressed my mind to.

[14] Mr. Clarke has pointed out that there are no breaches of the driving order for some nine and a half years of a ten year prohibition. In other words, it appears that Mr. Taylor successfully completed almost all of the original probation order. Mr. Clarke pointed out the reasons for driving, but as I have mentioned before, those reasons, in my view, were not pressing, and, in my view, were not mitigating. Indeed, one could argue, and I think Mr. Cliffe alluded to the fact that these circumstances indicated that Mr. Taylor was somewhat casual, at this stage of his order, about the order and was not taking it as seriously as it was intended to be taken.

[15] Mr. Clarke pointed out that the driving took place on the other side of the river. I understand that the west side of the river is an area where there is very limited traffic and there was no evidence of erratic driving or anything of that nature. I have considered this fact and I have concluded that this is not a mitigating factor. Had there been erratic driving or had there been a lot of traffic, that might have been an aggravating factor, but the lack of traffic it is not a mitigating factor. The prohibition is one of not driving a motor vehicle. It is not driving a motor vehicle in busy traffic or not driving a motor vehicle erratically.

[16] Mr. Clarke has pointed out and I accept that since Mr. Taylor's sentence in 1997, there have been no other convictions. I also inferred from the fact Mr. Taylor received early parole that he had responded well to the sentence while in custody.

[17] I want to get back to the issue of the seriousness of the offence that was raised by Mr. Clarke. Mr. Clarke argued that the seriousness of the predicate offence is not a proper consideration in sentencing for a breach of a driving prohibition order. I have concluded that the nature of the predicate offence can be a serious aggravating factor, particularly when combined with a record that makes this breach more serious than a typical driving prohibition breach. As I mentioned before, the predicate offence was one of the most serious offences one can find in the *Criminal Code*.

[18] Someone's life was terminated as a result of Mr. Taylor's drinking and driving. But when this serious offence is combined with a history of alcohol abuse, a total of five drinking and driving convictions and prohibitions, the driving prohibition that was breached and is before the Court today, has special meaning. In other words, with that history of drinking and driving, it is very clear that the Court at the time of sentencing for the predicate offence, was very concerned about public safety, because as our Court of Appeal has indicated on several occasions, once an impaired driver gets behind the wheel, whether someone gets killed or not is sometimes just a matter of luck. So it is really a very serious matter.

[19] There is no evidence, in this particular case, that Mr. Taylor has stopped drinking or has abstained from alcohol for a significant period of time that would lessen that concern in the Court's mind. There is no evidence of him attending and successfully

completing a residential treatment program or some other similar programming. There was reference to a self-help program that he relies on, but there was not enough information about it to reduce, in my mind, the seriousness of the predicate offence and the Court's concerns about public safety.

[20] So, in my view, the breach here, the circumstances of the predicate offence, and Mr. Taylor's associated criminal record, brings this well beyond the 90-day sentence that Mr. Clarke suggested was the standard sentence for driving while disqualified in this Territory.

[21] Mr. Cliffe took some pains to emphasize to the Court that the Crown considered this a very serious matter and elected to proceed indictably. Mr. Clarke pointed out, and I agreed with him, and I want to emphasize for the record that the Crown's view of the matter is something that is presented to the Court, my decision is based on the evidence. An opinion by the Crown is not evidence. It is merely an indication of how the Crown views the evidence. But Parliament has determined that when the Crown proceeds by indictment, the maximum penalty is five years incarceration. This is far in excess of the sentence suggested by the defence. In my view, Parliament intended the Court to consider a variety of factors, including the seriousness of the predicate offence and the threat to public safety the accused presents to society.

[22] In this case, for the reasons I have indicated earlier, I consider this to be a very serious matter. There will be serious consequences. I am not going to go into any detail as to why a conditional sentence is inappropriate except to say that, in my view, it

is not in the public's interest and in all of the circumstances it would send the wrong message with respect to the administration of justice to this community.

[23] Taking into account all these factors that I have set out, an appropriate sentence, in my view, would appear to be a period of incarceration of eight months and I so order. In addition, pursuant to s. 259 of the *Criminal Code*, Mr. Taylor is prohibited from operating a motor vehicle on any road, highway or public place anywhere in Canada for a period of one year. In light of the length of the sentence, I am going to waive the victim fine surcharges.

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LILLES T.C.J.