

Citation: *R. v. Van Bibber*, 2007 YKTC 42

Date: 20070530
Docket: T.C. 06-00743
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

DARRYL VINCENT VAN BIBBER

Appearances:

Ludovic Gouaillier

Margaret O'Brien, Aboriginal Court Worker

Counsel for Crown

Appearing for Darryl Van Bibber

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Van Bibber has pled guilty to one count on s. 259. The facts before the Court are that Mr. Van Bibber was found to be driving a vehicle on February 10th while he was disqualified from doing so. His disqualification was an 18 month one from 2005. He has a record that has two prior drinking and driving offences, with the last one being the 2005 conviction. The one prior to that was 1991.

[2] Crown is suggesting 30 to 45 days. Defence is seeking a community sentence, or, at worst, an intermittent sentence. The Court has been provided with a pre-sentence

report showing that Mr. Van Bibber is generally a reasonable community individual and currently a single parent raising his young daughter.

[3] It is a difficult situation that I am in, Mr. Van Bibber. There is case law in this jurisdiction that comes from a case known as *R. v. Battaja*, [1990] Y.J. No. 208 (QL), and in that case, the Territorial Court judge, then, I believe, was the Chief Judge, Judge Lilles, indicated that convictions registered on driving while prohibited or disqualified must be looked upon by the Court, barring any exceptional circumstances, as essentially an extreme contempt of a court order in order for court ordered prohibitions to have any effect at all.

[4] As such, a starting point of 30 days in jail would be where you would be looking for, basically, just being caught the one time you were out. Now, here is the problem I have. When I read the PSR, and again, I have to admit and accept that certainly you have been cooperative throughout with the police, but when I read the PSR, the indication is that you really did not abide by that prohibition much at all. You leased a vehicle and had it leased for at least a year. You certainly would not do that if you had not been planning to have a vehicle to drive.

[5] THE ACCUSED: I wasn't driving.

[6] THE COURT: What is that?

[7] THE ACCUSED: My girlfriend was driving it. It was under her name, the insurance.

[8] THE COURT: Well, you admitted in here that this certainly was not the only time you have driven in the past 18 months. So in all likelihood, you were driving more or less regularly. You may have certainly given some thought to not driving if your girlfriend could drive you or whatever, but when she could not, then you would drive yourself. That is serious consideration. It was an 18 month prohibition. There was a reason it was an 18 month prohibition. What you have to understand is that the Court does not prohibit you from driving unless it is inconvenient. They prohibit you from driving, period. You have lost that right for that period of time. If you just take it upon yourself to give yourself back that right, then the Court ordering it in the future really has very little weight.

[9] As such, I have to say not only is this not exceptional circumstances, certainly in the mitigating end, it is perhaps more exceptional circumstances in the aggravating end. Once the Court has indicated that this is the norm, this is where we should start is at 30 days, it is very difficult for me to go beyond that, particularly if I feel that there are some aggravating circumstances. Fortunately for you, you were not intoxicated at the time that you were stopped, which would have been even a more severely aggravating circumstance.

[10] The message has to certainly get through not just to you, but to anybody else, because there had to be people in Mayo that would know and recognize that you are not supposed to be driving and yet would probably see you driving when you did on occasion. It is a small community; that is what happens in small communities. They turn around and think, you know, I hope he does not get caught or perhaps some of them think why does he not get caught. Here, you finally did get caught.

[11] The way I am going to dispose of this is it is going to be a jail sentence. It is going to be a straight time jail sentence and it is going to be 45 days. The victim fine surcharge is going to be waived. I guess if you have any silver lining it, it is that although my tendency is to suggest that perhaps another one year prohibition should apply, I am not going to do that. Your prohibition is, essentially, almost over, I believe, at this point in time. So I am going to allow that once you are out of jail you get your licence back, if in fact your prohibition is over.

[12] It could very easily have gone where the Court could have simply attached a further prohibition of one year to 18 months beyond this time to make the point, you are prohibited from driving.

[13] The victim fine surcharge, as I said, would be waived.

CAMERON J.P.T.C.