

Citation: *R. v. Wiebe*, 2011 YKTC 59

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Docket: 11-00240
11-00255
11-00255A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

DAVID CHARLES WIEBE

Appearances:
Ludovic Gouaillier
Melissa Atkinson

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): David Wiebe is before me for sentencing with respect to two counts to which he has entered pleas of guilty, the first being his first conviction for driving while the concentration of alcohol in his blood exceeded the legal limit, and the second, in time, being a break and enter.

[2] The impaired came to light as a result of an anonymous report of an impaired driver. Mr. Wiebe was located in the vehicle that was described and was noted to be exhibiting indicia of impairment, including slurred speech, odour of liquor, and issues with both balance and fine motor coordination. He ultimately provided two samples of

his breath, which registered at 150 and 140 milligrams per cent.

[3] Then, on July 4, 2011, a call was made to the police with respect to a possible break and enter in progress. A neighbour to the residence in question heard noises. When the police attended they located Mr. Wiebe in the residence and he appeared to be attempting to remove a bike from the residence. It should be noted that one of the contentious issues in this case, as it had been set down for trial, was the nature of the place which had been broken into. It is a house, but it is not a home, so it does not fit the definition of dwelling house. It is an old house, which appears to be uninhabitable at this point in time and is being used for storage. In any event, the parties were able to reach agreement with respect to that issue as well as able to reach agreement with respect to their views on an appropriate disposition.

[4] I do have a joint submission before me. The only other thing from a factual standpoint, which in my view is important, is that Mr. Wiebe was under the influence of both alcohol and crack cocaine on the evening of July 4th, and does not have a clear recollection of what occurred on that particular evening.

[5] He has now entered a guilty plea. The matter had been set, as I said, for trial although it was an early trial date, and it appears there were some issues that could not be resolved between the parties until today. I am satisfied that Mr. Wiebe, nonetheless, should be given credit for his guilty plea.

[6] The joint submission before me is for 15 months in addition to the roughly two months that Mr. Wiebe has already spent in pre-trial custody, with a 14-day concurrent sentence with respect to the impaired. In my view, the sentence falls within the range

and I do not see any reason for me to depart from the joint submission. Accordingly, Mr. Wiebe, the sentence is going to be as follows, with respect to the s. 348, there will be a sentence of 15 months.

[7] THE ACCUSED: Okay.

[8] THE COURT: With respect to the impaired, it is your first impaired offence which would normally result in a fine. In your circumstances, I think it probably makes sense to just simply get it done --

[9] THE ACCUSED: Yeah, yeah, yeah.

[10] THE COURT: -- along with the other sentence instead of having to come up with those funds. So it will be a 14-day sentence but because it is a first offence, I will make that concurrent so that it gets served and finished at the same time instead of coming at the end of the other sentence.

[11] THE ACCUSED: Okay.

[12] THE COURT: I will waive the victim fine surcharges, given your custodial status, and I think that just leaves the remaining counts?

[13] MR. GOUAILLIER: Yes. Well, yes, there will be a stay of proceedings, and -- I'm sorry, yes, and there -- two things I wanted to address. First, there is also the question of a driving prohibition for one year that should be --

[14] THE COURT: Yes, thank you.

[15] MR. GOUAILLIER: -- accompany. Sorry, I didn't mention it in my

submissions. And secondly, if I could just make sure that the record reflect the agreement, which is the sentence of 15 months addition to --

[16] THE COURT: Yes.

[17] MR. GOUAILLIER: -- two months served. On the warrant of committal --

[18] THE COURT: Okay, so it is an effective 17 month sentence set.

[19] MR. GOUAILLIER: Yes, right.

[20] THE COURT: So we will have it recorded as two months time served, plus 15 months, thank you. For the driving prohibition, the minimum is 12 months so there will be a 12-month driving prohibition. If you are looking to get your licence back, though, there are some hurdles you will have to go through with the Motor Vehicles Branch.

[21] THE ACCUSED: Okay.

[22] THE COURT: But as far as the Court is concerned, you are prohibited for 12 months. Okay, I think that covers everything.

[23] MR. GOUAILLIER: Yes.

RUDDY T.C.J.