

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Eastveld*, 2021 NSPC 66

Date: 20210805

Docket: 8392976

Registry: Pictou

Between:

Her Majesty the Queen

v

Julia Anne Eastveld

SENTENCING DECISION

Judge: The Honourable Judge Del W Atwood

Heard: 2021: August 5 in Pictou, Nova Scotia

Charge: Section 320.14(1)(b) of the *Criminal Code of Canada*

Counsel: Jody McNeill for Nova Scotia Public Prosecution Service
Jonathan Hughes for Julia Anne Eastveld

NOTE: In transcribing the oral decision rendered in this matter, editing has taken place to include omitted citations and quotes from secondary sources and to make changes to format or to grammar for readability. No changes have been made to the substantive reasons for decision.

By the Court:

Synopsis

[1] This case has to do with the authority of a sentencing court to deduct from a mandatory-minimum term of driving prohibition a credit arising from a license revocation imposed by a provincial statute.

Procedural history

1 February 2021—guilty plea

[2] On 1 February 2021, Ms Eastveld pleaded guilty to a charge under ¶ 320.14(1)(b) of the *Criminal Code*, case number 8392976. The case proceeded summarily. The court adjourned sentencing at the request of Ms. Eastveld’s counsel to 23 June 2021.

23 June 2021—sentencing hearing commences

[3] On 23 June 2021, the court heard a statement of facts and sentencing submissions from counsel; I imposed a fine of \$1000.00. The prosecutor sought the mandatory-minimum-one-year driving prohibition under the provisions of ¶ 320.24(2)(a) of the *Code*.

[4] Defence counsel sought to have the court grant Ms Eastveld a driving-prohibition credit of 143 days, representing the interval between the date of her guilty plea (1 February 2021) and the date of her sentencing hearing (23 June 2021). The basis for the credit, as advocated by defence, was that Ms Eastveld had been informed by the Registrar of Motor Vehicles that her driver's license had been revoked in virtue of § 278(1) of the *Motor Vehicle Act* [MVA]; the revocation was effective the date of the guilty plea. The prosecution opposed the granting of credit.

[5] I adjourned the matter to today (5 August 2021) to allow counsel the opportunity of submitting authorities to the court.

Credit that would reduce a term of driving prohibition

[6] Based on my review of the authorities, this is a matter of first impression in Nova Scotia.

[7] However, courts in other provinces have grappled with the issue; it has also come up in the Supreme Court of Canada.

[8] Defence counsel relies on *R v Guir*, 2017 ABPC 192 ¶ 28-29 [*Guir*]. In that case, the sentencing judge ruled that a court-ordered prohibition term be shortened by the amount of time that had elapsed between the date of the accused's guilty

plea and the date of the imposition of the period of prohibition; the rationale for the credit was that the provincial licencing authority had issued a revocation effective the date of Mr Guir's guilty plea and there was a long interval between that date and the date of sentencing. Although not stated expressly in *Guir*, it appears that the credit granted in that case reduced the prohibition term below the mandatory minimum prescribed in § 259(1) of the *Code*; accordingly, *Guir* is analogous to Ms Eastveld's case.

[9] *Guir* was followed in *R v Sohal*, 2018 ABPC 86. In *Sohal*, a credit was granted based on the accused person having been subject to an administrative driving suspension that had been issued at the time of arrest. *Sohal* was reversed in 2018 ABQB 845, and the reversal was affirmed in 2019 ABCA 293 [*Sohal*]; this renders the persuasive-precedential value of *Guir* questionable.¹

[10] Neither *Guir* nor *Sohal* is binding on this court.

[11] With typical candor, the prosecution provided a thorough canvassing of the governing authorities, including those that support the argument advanced by defence counsel.

¹I consider as implicitly overruled by *Sohal* the judgment in *R v Watson*, 2018 ABQB 832, a summary-conviction appeal which affirmed a credit granted arising from a roadside suspension. *Watson* remains useful as it contains an extensive review of relevant cases.

[12] I found particularly persuasive *R v Basque*, 2020 NBQB 130, which followed the decisions of *R v Bland*, 2016 YKSC 61 and *R v Edwards*, 2016 NJ No 565 (PC).

[13] In my view, *Basque* offers a comprehensive response to the appellate reasoning *Sohal*: a court may grant a credit for a driving disqualification imposed prior to sentencing when that disqualification arises “in respect of the very criminal offence which gives rise to the sentence”; that authority is implicit in the driving-prohibition-reduction outcome in *R v Lacasse*, 2015 SCC 64 ¶ 113-114.

[14] In *Basque* and *Lacasse*, credits were granted for periods of bail-imposed driving disqualifications.

Application of Basque and Lacasse to the facts in Ms Eastveld’s case

[15] The Court is being asked in this application to grant a credit related to a statutory revocation upon conviction. On 1 February 2021, Ms Eastveld pleaded guilty and the court adjourned the sentencing hearing; shortly after that 1 February appearance, Ms Eastveld was notified by the Registrar of Motor Vehicles that her licence had been revoked. The governing authority for the revocation is § 278(1) of the *Motor Vehicle Act* [MVA] which provides that that:

278 (1) ... a person's driver's license or privilege of obtaining a driver's license is revoked upon the person's conviction in the province for any of the following crimes or offences:

...

(b) an offence against... section 320.14... of the *Criminal Code*.

[16] It is apparent that the Registrar of Motor Vehicles treated Ms Eastveld's guilty plea on 1 February 2021 as a conviction for the purposes of invoking § 278(1) of the *MVA*.

[17] The issue as framed by counsel is this: Does a license revocation arising from a provincial statute have the same credit-entitlement effect as a bail-imposed driving prohibition?

[18] The prosecution asserts that a license revocation imposed by statute is different to a bail-imposed driving prohibition; the argument is that the two are sufficiently different that the principles in *Basque* and *Lacasse* would not apply to Ms Eastveld.

[19] The prosecution argues that persons subject to revocations under § 278(1) of the *MVA* do not face the same penalty risk should they be caught driving as persons subject to bail-imposed prohibitions. The prosecution correctly identifies § 287 of the *MVA* as penalizing the offence of operating a motor vehicle while revoked, and contrasts this with the potential criminal penalty under ¶ 145(4)(a) or

145(5)(a) of the *Code* for operating a conveyance while prohibited from doing so in virtue of a term of bail. It is this distinction that is said to make Ms Eastveld's situation different to *Basque* and *Lacasse*.

[20] I am unable to agree with this argument. This is because § 320.18 of the *Code* states that:

320.18(1) Everyone commits an offence who operates a conveyance while prohibited from doing so

...

(b) by any other form of legal restriction imposed under any other act of parliament or *under provincial law*, in respect to a conviction under this act or a discharge under s. 730. [Emphasis added]

[21] A revocation under § 278 of the *MVA* is a form of legal restriction imposed under provincial law in respect of a conviction under the *Code*. Ms Eastveld would have risked criminal prosecution had she operated a motor vehicle after 1 February 2021.

[22] In any event, the extent of Ms Eastveld's jeopardy had she driven while revoked seems to be beside the point. The fact is that the revocation barred her from operating a conveyance. I am of the view that it is the disqualification-from-driving effect—rather than the penalty-if-caught-driving effect—that is of real moment in determining eligibility for a credit.

[23] The reasoning in *Basque* is persuasive, and I intend to follow it. It has *Lacasse* as a support: there is a common-law authority to grant a credit against a driving prohibition in order to avoid a double punishment; the fact that there is no statute expressly allowing it was not seen as a barrier in *Lacasse*.

[24] As to the mechanics of a credit, the court in *Basque* concluded that the proper approach to take in granting a credit against a term of prohibition was to impose the mandatory period of prohibition (or a greater term if warranted) and then grant credit. The back dating of a prohibition order is not appropriate, and runs counter to the statutory principle in § 719(1) that a penalty take effect when it is imposed.

[25] It is true that in *R v Denny*, 2018 NSCA 11 the Court appeared to back date a prohibition order on a sentence appeal; the Court used that very terminology at ¶ 5. However, the effective outcome in that case was that the court resorted to its appellate authority under § 687 of the *Code* to vary a prohibition order that had been made earlier, so that it did not have to do any backdating.

[26] I find the proper approach is to adopt the position taken in *Basque*. The Court is going to order and direct that Ms Eastveld be prohibited from operating a motor vehicle on any street, road, highway or other public place for a period of one

year. The prohibition order commences today; however, the court is granting Ms Eastveld a credit of 185 days, to be deducted from the one-year term, which is the interval from the Registrar's revocation on 1 February 2021 to today's date. The court declines to order a waiting period for the interlock program so that Ms Eastveld would be eligible to apply for the interlock program at the earliest opportunity in accordance with the statute.

JPC