CR 03058

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOHN FRANCIS DINN

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

Summary conviction appeal from two year driving prohibition imposed on s.253(a) conviction. Appeal allowed and length of prohibition reduced to 14 months.

Heard at Yellowknife on December 21, 1995

Judgment filed: December 22, 1995

REASONS FOR JUDGMENT OF THE HONOURABLE MADAM JUSTICE V.A. SCHULER

Counsel for the Appellant: Self

Counsel for the Respondent: Ms. L. Charbonneau

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REASONS FOR JUDGMENT

1 The sole issue on this summary conviction appeal is whether the Territorial Court Judge who sentenced the appellant erred in ordering a two year driving prohibition for a conviction under section 253(a) of the *Criminal Code* (impaired driving).

2 The appellant pleaded guilty to and was convicted of impaired driving and failing to appear in court, contrary to section 145(5) of the *Criminal Code*. He was sentenced to four months in jail and a two year driving prohibition for impaired driving and one month consecutive in jail for failing to appear.

3 The Crown submitted to the Territorial Court Judge a previous record of the appellant and a Notice of Intention to Seek Greater Punishment. The record is as follows:

Date	Code Section	Sentence	
March 12, 1980	s.234	Fine	$400.00
November 5, 1982	s.235(2)	Fine	$450.00
September 4, 1991	s.253(a) and s.254(5)	Fine	$750.00

On the hearing of this appeal, Crown counsel advised that the convictions dated September 4, 1991 had also resulted in a six month driving prohibition. Crown counsel also stated that, contrary to what had been submitted to the Territorial Court Judge, both convictions on September 4, 1991 resulted from the same incident.

4 The facts as presented to the Territorial Court Judge indicate that the appellant was impaired as a result of drinking and at 10.15 in the morning was observed driving in an erratic fashion on the highway which leads from the centre of Yellowknife to the airport. He was noted to exceed the speed limit and at times to be driving all over the road. He had a passenger in the vehicle during part of the time in question.

5 The appellant submitted on the appeal, as did his counsel at the sentencing, that the witness to his driving was an individual with whom he had had a feud for some time. I understand his submissions as to the significance of this to be that the witness's report to the police may have been somewhat exaggerated as a result of this feud. However, the facts were admitted and therefore I place no weight on that submission.

6 The facts as submitted included that the appellant has been a taxi driver for approximately nine years, but was not driving in the course of his employment at the time in question, nor was his passenger a paying one.

7 I must decide whether the length of the driving prohibition imposed by the Territorial Court Judge as part of the appellant's sentence is fit.

The Territorial Court Judge placed some emphasis on the two convictions

in 1991 having arisen from separate incidents. This may have caused him to view the record more severely than he might have had he been told that there was only one incident in 1991. That he did view the record as a very aggravating factor is, I think, reflected in the fact that he referred to the British Columbia Court of Appeal and Yukon Supreme Court having stated that two years imprisonment is appropriate on a fifth and sixth conviction. He said that were it not for the Crown having proceeded summarily in this case, he would not hesitate to impose a term of imprisonment of two years.

9 Crown counsel at the sentencing, who was not counsel on the appeal, asked the Territorial Court Judge to consider the statutory minimum as an appropriate sentence. Although she made specific reference only to the ninety day statutory minimum for imprisonment and did not specifically note that the minimum driving prohibition in the appellant's case is one year, I conclude from her submissions that at the time of sentencing the Crown did not seek more than the statutory minimum driving prohibition of one year pursuant to s.259(1)(c) of the *Criminal Code*. On this appeal, Crown counsel, although seeking to uphold the decision of the Territorial Court Judge, conceded that at sentencing the Crown did not take a strong stand with respect to the length of the prohibition.

10 I note that in recent cases involving driving offences, this Court has imposed driving prohibitions of two years where there was bodily harm caused to pedestrians: *R.* v. *Bouvier*, October 13, 1995, CR 02953 and *R.* v. *Christofferson*, October 26, 1995, CR 02937. Fortunately, this case lacks that element.

11 Given the emphasis placed by the Territorial Court Judge on the appellant's record, it is not clear whether he might have imposed a shorter driving prohibition had he been given the correct information about that record. Two of the appellant's convictions for drinking and driving related offences occurred over twelve years ago. It is now clear there was one incident, reflected in the 1991 convictions, over three years ago.

12 Taking all of the circumstances into consideration, I conclude that a driving prohibition of fourteen (14) months is appropriate. I have decided on fourteen months because this should, in the normal course, result in the appellant being prohibited from driving for approximately one year after his release from jail on these charges. I therefore allow the appeal and reduce the period of prohibition to fourteen (14) months. As the appellant is unrepresented, I request that Crown counsel prepare the necessary order.

V.A. Schuler
J.S.C.

Yellowknife, Northwest Territories
22nd December 1995

Counsel for the Appellant: Self

Counsel for the Respondent: Ms. L. Charbonneau

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REASONS FOR JUDGMENT
HONOURABLE MADAM JUSTICE V.A. SCHULER