

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

TONY BERNHARDT

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Transcript of the Reasons for Sentence by The Honourable  
Justice J.E. Richard, at Yellowknife in the Northwest  
Territories, on November 9th A.D., 2010.

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APPEARANCES:

Ms. A. Racine: Counsel for the Crown  
Mr. T. Boyd: Counsel for the Accused

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Charge under s. 253(1) (a) Criminal Code of Canada

1 THE COURT: This afternoon, it is the  
2 Court's responsibility to impose an appropriate  
3 sentence upon an offender for a drinking and  
4 driving offence - an offender who has a  
5 repetitive history, over a 20 year period, of  
6 drinking and driving offences. The offender is  
7 Tony Bernhardt, a man of 46 years of age and a  
8 resident of Inuvik. I am told that he is a  
9 self-taught mechanic and that he has had regular  
10 employment in that field for much of his adult  
11 life.

12 Mr. Bernhardt's latest offence occurred on  
13 November 21st, 2009 in Inuvik. He took a motor  
14 vehicle without the owner's consent from the  
15 parking lot of an apartment building in Inuvik.  
16 He was able to start the vehicle without having  
17 the key. At the time that he drove away in the  
18 vehicle, he was intoxicated. He had a passenger  
19 in the vehicle.

20 While driving the vehicle on the streets of  
21 Inuvik, he got the vehicle stuck in the ditch on  
22 two separate occasions. Witnesses called the  
23 police and when the police arrived at the second  
24 location where the vehicle was stuck, the police  
25 observed an intoxicated Tony Bernhardt in the  
26 driver's seat. Mr. Bernhardt was arrested and  
27 taken to the RCMP detachment.

1           He was requested to provide breath samples  
2 but he declined.

3           After Mr. Bernhardt was charged, he was  
4 released pending the disposition of his charges.  
5 He was required to attend court in Inuvik on  
6 February 8, 2010 to deal with his charges. He  
7 failed to attend court on that date. As a  
8 result, he was arrested and he has been in  
9 custody awaiting disposition of his charges for  
10 approximately eight months.

11           Mr. Bernhardt requested a preliminary  
12 inquiry and that inquiry was held in Territorial  
13 Court in Inuvik in June 2010. Yesterday Mr.  
14 Bernhardt attended in Supreme Court here in  
15 Yellowknife and entered a plea of guilty to the  
16 offence of impaired care and control contrary to  
17 Section 253 of the Criminal Code. While not an  
18 early guilty plea, that plea is a factor in  
19 mitigation of sentence.

20           As stated earlier, this offender Tony  
21 Bernhardt has a significant record of prior  
22 convictions relating to drinking and driving.

23           He has four convictions for impaired  
24 driving, and for those offences he received  
25 sentences ranging up to 18 months imprisonment.  
26 He has four other convictions of over 80. For  
27 those offences, he received sentences ranging up

1 to one year imprisonment. The Courts have, on  
2 nine separate occasions in the past 20 years,  
3 made an order prohibiting him from operating a  
4 motor vehicle. On three occasions the driving  
5 prohibition order was for a period of three  
6 years. On another occasion the driving  
7 prohibition order was for a period of seven  
8 years. Mr. Bernhardt has nine other convictions  
9 under the Criminal Code for driving while  
10 disqualified. For those he has received  
11 sentences ranging up to 18 months imprisonment.  
12 At the time of his present offence in November  
13 of 2009, Mr. Bernhardt was then under two  
14 separate driving prohibition orders issued by  
15 the Court.

16 Mr. Bernhardt's extensive criminal record  
17 for related offences is an aggravating factor in  
18 the determination of an appropriate sentence.  
19 It is also an aggravating feature that Mr.  
20 Bernhardt was under not one but two separate  
21 driving prohibition orders when he committed  
22 this offence in November 2009.

23 The primary consideration in a case like  
24 this is the protection of the public. It is  
25 still the case that every year in this country,  
26 drinking and driving leaves a terrible trail of  
27 death, injury, and tragedy in the lives of

1           Canadians. In terms of numbers, it is said to  
2           have a far greater impact on Canadian society  
3           than any other crime.

4           Obviously in a sentencing disposition such  
5           as this one, an important objective is  
6           deterrence - both individual deterrence for Tony  
7           Bernhardt but also to deter other persons from  
8           getting behind the wheel of a car after they  
9           have been drinking.

10          I will also mention here the important  
11          principle of proportionality; that is, the  
12          sentence I impose must be proportionate to the  
13          gravity of the offence and to Mr. Bernhardt's  
14          degree of responsibility. Given Mr. Bernhardt's  
15          repetitive behaviour in the past 20 years and  
16          the circumstances, which include the Court's  
17          repeated admonitions to Mr. Bernhardt, this is a  
18          very serious matter and Mr. Bernhardt's level of  
19          responsibility for his predicament is high.

20          In all of the circumstances, I find it  
21          necessary to impose a substantial period of  
22          incarceration for Mr. Bernhardt's latest  
23          offence.

24          Counsel have raised the issue of Mr.  
25          Bernhardt's period of pre-trial custody so I  
26          will address that.

27          The provisions of Bill C-25, which now

1 limits the credit which can be given for time  
2 spent in pre-sentencing custody, are not  
3 applicable on this sentencing hearing as Mr.  
4 Bernhardt was charged prior to Bill C-25 coming  
5 into force.

6 As mentioned earlier, Mr. Bernhardt has  
7 been in custody for approximately eight months  
8 awaiting disposition of his charges. For two  
9 months of that eight month period, he was  
10 actually serving sentences imposed on him for  
11 other matters in June of this year hence he has  
12 a net of six months of what might be termed  
13 pre-sentencing custody. The reason he was in  
14 pre-sentencing custody, of course, was entirely  
15 of his own doing; that is, apart from the events  
16 of November 2009, he had obtained his liberty  
17 after he was charged and while awaiting the  
18 disposition of those charges, he failed to  
19 comply with the simple condition of attending  
20 court when required. He is a person who has a  
21 great deal of experience with the courts;  
22 indeed, his criminal record shows several  
23 convictions for failure to attend court. So he  
24 would have known of the importance of complying  
25 with that simple condition of his being free on  
26 bail.

27 I am also told that while in pre-sentencing

1 custody at the North Slave Correctional Centre,  
2 Mr. Bernhardt has had access to, and has  
3 exercised access to, counselling and other  
4 programs so it cannot be said that he has  
5 endured any additional hardship while in remand  
6 awaiting his day in court. In all of these  
7 circumstances, I am unable to grant Mr.  
8 Bernhardt any enhanced credit for his six months  
9 of pre-trial custody, in other words beyond the  
10 straight one-for-one credit.

11 Please stand now, Mr. Bernhardt.

12 Mr. Bernhardt, for the crime of impaired  
13 care and control contrary to Section 253 of the  
14 Criminal Code, it is the sentence of the Court  
15 that you be imprisoned for a period of two  
16 years. I give you credit of six months for your  
17 time in remand therefore the net sentence is one  
18 of 18 months imprisonment.

19 In addition, pursuant to Section 259 of the  
20 Criminal Code, I hereby order that you are  
21 prohibited from operating a motor vehicle for a  
22 period of ten years following your release from  
23 the term of imprisonment.

24 Although I am sure that you are familiar  
25 with the process, I will direct the clerk, once  
26 the prohibition order has been prepared, to read  
27 it over to you, to provide you with a copy, and

1 to inform you of the consequences of failing to  
2 comply with the probation order.

3 Take a seat.

4 Anything further, counsel, on this case?

5 MS. RACINE: No, Your Honour, as Count 2  
6 is stayed.

7 THE COURT: Mr. Boyd?

8 MR. BOYD: Nothing from the defence,  
9 thank you, Your Honour.

10 THE COURT: Thank you, we will close  
11 court.

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16 Certified to be a true and  
17 accurate transcript pursuant  
18 to Rules 723 and 724 of the  
Supreme Court Rules,

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19 Transcribed from an Audio  
Recording provided to me,

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Lois Hewitt, CSR(A), RPR, CRR  
Court Reporter

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