Date: 2011 03 25
File: T1-CR-2010001753

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

CHERYL WILLIAMS

REASONS FOR JUDGMENT
of the
HONOURABLE CHIEF JUDGE ROBERT DAVID GORIN

Heard at:	Yellowknife, Northwest Territories January 11, 2011
Reasons Filed:	March 25, 2011
Counsel for the Crown:	A. Godfrey
Counsel for the Accused:	A. Parr

[s. 259(4) of the *Criminal Code*]

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Introduction

[1] The information before me alleges that the Accused:

> On or about the 28 day of September 2010, at or near the City of Yellowknife in the Northwest Territories, did operate a motor vehicle, a blue 2006 Ford F-150 pickup truck, while disqualified from so doing by reason of an order pursuant to Section 259(1) or (2) of the *Criminal Code*, contrary to Section 259(4) of the *Criminal Code*.

[2] The *Criminal Code* driving prohibition in question was imposed on August 21st, 2009. It was imposed on a conviction for impaired operation of a motor vehicle contrary to s. 253(1)(a) of the *Code*. The accused was not sentenced to jail on this conviction. However, at the time of sentencing, she was sentenced to jail on two other convictions. She was sentenced to 30 days in jail on a conviction for taking a motor vehicle without the consent of the owner, contrary to s. 335 of the *Code*, and to a further consecutive 30 day jail sentence for failing to comply with a condition of an undertaking or recognizance.

[3] On October 1, 2009, she was released as a result of the statutory remission provisions of the *Corrections Act*, R.S.N.W.T. 1988 (as amended), after having actually served approximately 40 days of her 60 day jail term.

[4] There is no question that on the date charged, September 28, 2010, the Accused was operating a motor vehicle on 50th Avenue in Yellowknife. However, the question in this case is whether she was still subject to the "one year" driving prohibition order imposed on August 21st, 2009. Specifically, the issue is whether the one year *Criminal Code* driving prohibition imposed on the s. 253(1)(a) conviction on August 21st, was extended as a result of the 60 day jail term imposed on the other convictions at the time of the sentencing.

Analysis

[4] I have concluded that the jail terms imposed on the other convictions did not extend the driving prohibition beyond its 1 year term. I must therefore conclude that she was not operating a motor vehicle while disqualified, pursuant to the definition of "disqualification" provided in s. 259(5)(a). I have also concluded that the evidence in this case does not establish that the Accused was otherwise disqualified from operating a motor vehicle pursuant to the definition of "disqualification" provided in s. 259(5)(b).

"Disqualification"

[5] The relevant provisions of s. 259(5) provide:

> (5) For the purposes of this section, "disqualification" means
> (a) a prohibition from operating a motor vehicle, vessel or aircraft or any railway equipment ordered pursuant to any of subsections (1), (2) . . .; or
> (b) a disqualification or any other form of legal restriction of the right or privilege to operate a motor vehicle, vessel or aircraft imposed
> (i) in the case of a motor vehicle, under the law of a province, . . .
> . . .
> in respect of a conviction or discharge under section 730 of any offence referred to in any of subsections (1), (2) and (3.1) to (3.4).

Subsection 259(5)(b)

[6] I will first deal with the second of the two alternative definitions of "disqualification" provided in s. 259(5). All of the evidence in this case was presented through an "Agreed Statement of Facts" provided by counsel. I commend counsel for their efforts. However, the statement of facts seems to focus solely on whether the Accused was disqualified pursuant to the first definition provided in subsection (5). As conceded by both counsel with appropriate candor during oral argument, the second definition was entirely overlooked when the agreed facts were being drafted. In particular, the agreed facts do not fully deal with whether the Accused possessed a valid driver's license on the date charged.

[7] In *R. v. Clark*, [2000] A.J. No. 1099, 2000 ABCA 246, [2000] 11 W.W.R. 595, 84 Alta. L.R. (3d) 321, 266 A.R. 343, 148 C.C.C. (3d) 132, 7 M.V.R. (4th) 34, 47 W.C.B. (2d) 412, the Alberta Court of Appeal held that where an Accused

has lost his driver's license by operation of a provincial law due to a conviction for an offence referred to in s. 259(5)(b) , following the expiration of the driving prohibition he remains disqualified for the purposes of s. 259(4), until such time as his driver's license is reinstated. In *Clark*, the Accused had received a *Criminal Code* driving prohibition as a result of having committed an offence enumerated in s. 259. Also, under the laws of the province of Alberta, his driver's license had been revoked. At the time he was found operating a motor vehicle, his driving prohibition had expired. However, he had not taken the steps set out in s. 17 of the *Motor Vehicle Administration Act*, R.S.A. 1980, c. M-22, that were required in order for him to have his driver's license reinstated. As stated by the Court at paragraphs 6 and 10:

> - **6** The real crux of this case lies in the proper role of the phrase "in respect of a conviction" in s. 259(5)(b) of the Code, for it is this phrase which not only in part repaired the finding of unconstitutionality of this provision's predecessor in *R. v. Boggs*, [1981] 1 S.C.R. 49, but which also provides the necessary legal nexus in this case. A provincial disqualification of a licence does not fall within the meaning of disqualification under the Criminal Code, unless it is "in respect of a conviction" of a designated offence. In essence, the connection to the original offence under the Code becomes an element of the offence under s. 259(4). If the original suspension is a result of a designated Code provision, then the offence is made out (provided that all of the other elements are proven); if not, then there can be no conviction.
>
> - . . .
>
> - **10** The requisite steps prescribed in s. 17 must be viewed as part of a larger process or scheme that Parliament intended to serve public safety ends relating to driving offences. This process begins with the finding of guilt for the original offence under the Code and is completed once the offender is permitted to be reinstated as a licenced driver. The requirements under s. 17 are not simply administrative steps unrelated to the original offence, but are rather the final steps in the process before full reintegration into "driving society." Driving while disqualified within that period is contrary to the process and is a serious matter, not unlike a prisoner escaping from gaol: *R. v. Gaehring* (1956), 20 W.W.R. 189 at 191. The final steps before re-licencing is permitted are the final consequences of the original Code offence.

[8] In the *Agreed Statement of Facts* presented by counsel, the only reference to whether or not the Accused possessed a valid driver's license is a passage stating that one of the investigating officers "suspected" the Accused did not have a license and that, at a later point, both of the investigating officers "believed" she did not have a license. The issue of whether she in fact possessed a valid driver's license is not answered in the *Agreed Statement of Facts*. Had that question been adequately answered, it may well have been unnecessary for me to answer the question of whether or not the one year driving prohibition was extended as a result of the jail terms imposed on the other accompanying convictions. However, the onus of proof is on the Crown and I find it has not been established that the Accused had not re-qualified for her license on the date alleged.

Subsections 259(5)(a) and 259(1)(a)

[9] Under s. 259(5)(a), the driving prohibition imposed on the Accused was a "disqualification" for the purpose of the offence contrary to s. 259(4) with which she is charged. As stated, the driving prohibition imposed as a result of the Accused being convicted under s. 253(1)(a), was for a period of one year. Therefore it must have been imposed under s. 259(1)(a), which provides:

> 259. (1) When an offender is convicted of an offence committed under section 253 or 254 or this section or discharged under section 730 of an offence committed under section 253 and, at the time the offence was committed or, in the case of an offence committed under section 254, within the three hours preceding that time, was operating or had the care or control of a motor vehicle, vessel or aircraft or of railway equipment or was assisting in the operation of an aircraft or of railway equipment, the court that sentences

> the offender shall, *in addition to any other punishment that may be imposed for that offence*, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel or an aircraft or railway equipment, as the case may be,
>
> (a) for a first offence, during a period of not more than three years *plus any period to which the offender is sentenced to imprisonment*, and not less than one year . . .

(Emphasis Mine.)

[10] The issue to a large extend hinges on the words *"plus any period to which the offender is sentenced to imprisonment",* used in subsection (1)(a) of s. 259. The Accused argues that the words refer only to instances where both the jail term and driving prohibition are imposed for the same offence. The Accused argues that such an interpretation makes sense since in the case of a driving prohibition imposed under s. 259(1)(a), jail is optional. The Crown argues that the word "any" refers broadly to periods of imprisonment imposed for any offence, including but not limited to, the offence on which the driving prohibition is imposed.

[11] In considering the interpretation urged by the Accused, I note that subsections 259(1)(b) and (c), which deal with driving prohibitions imposed for second and subsequent offences, also use the words "*plus any period to which the offender is sentenced to imprisonment*". However where these subsections apply to offences contrary to s. 253, minimum periods of imprisonment are also required by s. 255(1). That said, the curative discharge provisions of s. 255(5) may apply to second and subsequent convictions under s. 253, and result in no imprisonment. Under such circumstances, the minimum driving prohibitions provided for in s.259 (1) would still apply, since that subsection refers to circumstances where the Accused is convicted "or discharged".

[12] The actual interpretation of the word "any" in subsection (1)(a) of s. 259 is not dealt with directly by any of the case-law that has been provided by counsel. However, in two of the cases provided by counsel for the Accused, the sentencing judge makes it clear that the driving prohibition is extended only by those terms of imprisonment imposed on the same offence(s) giving rise to the driving prohibition(s): *R. v. Horne*, 2009 ONCJ 341; *R. v. Fancy*, [2007] N.J. No. 191, 48 M.V.R. (5th) 92, 74 W.C.B. (2d) 27, 2007 CarswellNfld 179 (N.L.P.C).

[13] In answering the question of whether or not a driving prohibition is extended by terms of imprisonment imposed on convictions other than the conviction, on which the driving prohibition is imposed, I find the French versions of the relevant legislation and the driving prohibition order itself to be particularly helpful.

[14] Certainly it is arguable that the English wording used in the driving prohibition is capable of the interpretation urged by the Crown. The relevant English text, states that the driving prohibition is for a period of one year "*From the date of this order plus **any** period of imprisonment*".

[15] However, the relevant French text, contained in the order, states: *À partir de la date de l'ordonnance ou le cas échéant, après la peine d'emprisonnement.* If translated literally into English, the phrase reads: "*From the date of the order or **if need be or where applicable** after **the** term of imprisonment".* The French version

of the order appears to be less ambiguous than the English version. The words "*where applicable*" and "*the*" appear to plainly contemplate a period of imprisonment imposed on the same offence, for which the driving prohibition is imposed.

[16] The French version of s. 259(1)(a) considerably reinforces such an interpretation. The French text is as follows:

> 259. (1) Lorsqu'un contrevenant est déclaré coupable d'une infraction prévue aux articles 253 ou 254 ou au présent article ou absous sous le régime de l'article 730 d'une infraction prévue à l'article 253 et qu'au moment de l'infraction, ou dans les trois heures qui la précèdent dans le cas d'une infraction prévue à l'article 254, il conduisait ou avait la garde ou le contrôle d'un véhicule à moteur, d'un bateau, d'un aéronef ou de matériel ferroviaire, ou aidait à la conduite d'un aéronef ou de matériel ferroviaire, le tribunal qui lui inflige une peine doit, *en plus de toute autre peine applicable à cette infraction*, rendre une ordonnance lui interdisant de conduire un véhicule à moteur dans une rue, sur un chemin ou une grande route ou dans tout autre lieu public, un bateau, un aéronef ou du matériel ferroviaire:
>
> > a) pour une première infraction, durant une période minimale d'un an et maximale de trois ans, *en plus de la période d'emprisonnement à laquelle il est condamné*;

(Emphasis mine.)

[17] The following passage includes a literal translation of words that I have italicized in the above extract. The words that are translated literally are italicized. An abbreviated and paraphrased version of the intervening words has been added, to provide context. I have added further emphasis to two of the words that I think are particularly important.

> "*In addition to any other punishment that may be imposed for* ***that*** offence . . . .(the court may impose a driving prohibition during a period of at least one year and no more than three years), *in addition to* ***the*** *period of imprisonment to which he is sentenced*."

[18] As argued by the Accused through counsel, it is significant that the word "*the*", rather than the word "*any*" appears in the literally translated French version of the provision. "*Any*" is somewhat ambiguous in that one could interpret it as referring to any period of imprisonment that might be imposed for any offence including, but not limited to, the offence, for which the driving prohibition is imposed. However, once again, the French version is more precise. It speaks of "***the*** *period of incarceration*" imposed "*for* ***that*** *offence*". It refers unambiguously to the period of incarceration imposed for the same offence, for which the driving prohibition is imposed.

Conclusion

[19] While the English versions of both the driving prohibition order and s. 259(1)(a) of the *Code* are somewhat ambiguous, the French versions are not. The French versions of the driving prohibition and s. 259(1)(a) plainly provide that the driving prohibition may be further lengthened by a term of imprisonment only where both punishments are imposed for the same offence.

[20] Therefore it follows that the *Criminal Code* driving prohibition had expired prior to the date that the Accused was observed operating a motor vehicle on 50th Avenue in Yellowknife.

[21] In addition, the evidence does not establish beyond a reasonable doubt that the Accused driver's license had not been reinstated as of the date charged.

[22] Accordingly, I find her not guilty on the single count before me.

Robert D. Gorin
C.J.T.C.

Dated at Yellowknife, Northwest Territories
this 25th day of March, 2011.

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