DATE: 2012-08-28

Files: T3-CR-2012-00012
T3-CR-2012-00013

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

TARA-LEE TATIANA WEDZIN

REASONS FOR SENTENCE
of the
HONOURABLE CHIEF JUDGE ROBERT D. GORIN

Heard at:	Aklavik, Northwest Territories August 22, 2012
Counsel for the Crown:	Mr. J. Cliffe
Counsel for the Accused:	Mr. T. Boyd

[s. 253(1) (a), s.253 (1) (a) of the *Criminal Code*]

 DATE: 2012-08-28

Files: T3-CR-2012-00012
T3-CR-2012-00013

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

TARA-LEE TATIANA WEDZIN

A. INTRODUCTION

[1] On August 22nd of this year, in the community of Aklavik, the Accused pleaded guilty to two counts contrary to section 253(1) (a) of the *Criminal Code*. On the first offence I imposed the statutory minimum punishments of a $ 1,000 fine and a 1 year driving prohibition. On the second, I imposed a $ 2,000 fine and a 2 year driving prohibition consecutive to the first driving prohibition. I advised that written reasons would follow, in particular with respect to my decision to impose consecutive driving prohibitions. My reasons are set out in the following paragraphs.

B. THE FACTS

[2] The facts of the first offence of "impaired care or control" occurred on May 20th of this year. The police found the Accused on a white dirt bike with another female standing beside her. The dirt bike was running. When the police approached her she was observed to be heavily intoxicated, wobbling from side to side. She had glossy eyes and the smell of liquor on her breath. She appeared to be amused by the situation and was observed to be leaning up against a house for balance.

[3] The second offence occurred three weeks later on June 10th. The Accused had been driving her grandfather's taxi erratically, narrowly missing houses and pedestrians. There were passengers in the vehicle. The Accused lost control and simultaneously hit a house and parked vehicle. The Accused, who had no driver's license, left the location of the collision and locked herself in a house. Two days later, when she was arrested, she provided a statement stating that she had drank so much alcohol that she had blacked out and could not remember anything.

C. THE SENTENCES

[4] As counsel recognized, since there was no prior conviction for an offence contrary to section 253, the minimum punishments for second convictions set out in sections 255 and 259 did not apply.

[5] Ms. Wedzin came before the court at 18 years of age as a first time offender. She pleaded guilty to both charges at the earliest opportunity. Although the Crown requested a jail term on the second offence, I determined that imprisonment was

not warranted. I agree with the Crown that the facts of the second offence were quite serious and that it was an aggravating factor that she was on process for a similar offence when it was committed. As well, at the time of the second offence she was subject to a driving prohibition under the provisions of the *Motor Vehicles Act* of the Northwest Territories as a result of having been charged with the first offence. This too, I think, is an aggravating factor.

[6] However, given her age, her previous good character as well as her ultimate cooperation with the police and very early guilty pleas, I am of the view that imprisonment is not necessary in order to adequately address proportionality as well as denunciation and deterrence, both specific and general. The provisions of section 718.2(e) are clear, if imprisonment is not necessary, it must not be imposed.

[7] The fine of $ 2,000 on the second count is well in excess the minimum fine set out in section 255. It is also the highest amount which can still be serviced through the fine option program. Under s. 2 of the *Fine Option Regulations* made under the *Fine Option Act* of the Northwest Territories, an offender may service any fine not exceeding $ 2000 through the fine options if it is available in the community where she resides. The limit of $ 2000 applies to each fine as opposed to the total amount of 2 or more fines. An offender is credited with the equivalent of the minimum wage which is in effect at the time that the work is done. I understand that the current rate for minimum wage in the Northwest Territories is $ 10 per hour.

[8] I was told that the accused had no employment and am well aware that employment is scarce in the community of Aklavik. In order to service her fines

through the fine option program, she will be required to provide community service work for a total of 100 hours on the first fine and 200 hours on the second – the equivalent of full time work for almost two months.

[9] As well, when imposing fines instead of imprisonment, I bore in mind that it is typically the driving prohibition which is the most severe punishment in cases such as these. I am mindful of the fact that by imposing consecutive driving prohibitions totaling three years, the Accused will experience significant hardship. Under the circumstances, I determined that deterrence and denunciation, on the second offence in particular, could be addressed through a high fine and a lengthy driving prohibition consecutive to the first. I think a driving prohibition can be imposed not only to protect the public, but also as a deterrent and denunciatory penalty. I note that section 259(1) of the Code refers to driving prohibitions imposed for offences contrary to section 253 as being "punishment".

[10] On the issue of whether, I have the jurisdiction to impose consecutive driving prohibitions, s. 259(2.1) of the *Criminal Code* states:

> (2.1) The court may, when it makes an order under this section prohibiting the operation of a motor vehicle, a vessel, an aircraft or railway equipment, as the case may be, order that the time served under that order be served consecutively to the time served under any other order made under this section that prohibits the operation of the same means of transport *and that is in force.*
>
> (emphasis mine)

[11] When imposing two driving prohibitions, the first prohibition would be "*in force*" immediately upon it being imposed by the court. That being the case, the sentencing judge could then impose the second prohibition consecutive to the first.

The words "*and that is in force*" have the effect of limiting the court to imposing only one driving prohibition that is consecutive to another. Further driving prohibitions consecutive to a second driving prohibition, which is yet to commence, would violate the subsection.

[12] Defence counsel initially argued that in order for s. 259(2.1) to apply, there must be a *Criminal Code* driving prohibition in force at the time of the impaired driving offence for which the Accused is being sentenced. Respectfully, I am unable to agree. If parliament had intended that a prior conviction be required in order to impose a consecutive driving prohibition, parliament would have specifically said so.

[13] One might argue that the driving prohibition must be imposed and in effect prior to the court appearance during which the second driving prohibition is imposed in order for it to be made consecutive to the first. However, such an interpretation is not required on the plain meaning of the language used in s. 259(2.1). Moreover, it could lead to very odd results. It would not make sense that an Accused who is being sentenced on two separate offences of impaired driving at the same time could not have a consecutive driving prohibition imposed on him - but that a consecutive driving prohibition would be permitted if he were sentenced for the first offence the day, or even the morning before being sentenced on the second offence.

[14] Clearly, the power to impose consecutive driving prohibitions under s. 253(2.1) is discretionary. However, considering that the offences were completely

separate and discreet incidents, I find that a consecutive driving prohibition on the second more serious offence is appropriate. I have considered the cumulative effect of the fines and driving prohibitions imposed when assessing totality.

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

Dated at Yellowknife, Northwest Territories, this
29th day of August, 2012

DATE: 2012-08-28
Files: T3-CR-2012-00012
T3-CR-2012-00013

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

TARA-LEE TATIANA WEDZIN

REASONS FOR SENTENCE OF THE HONOURABLE CHIEF JUDGE ROBERT D. GORIN
