



**IN THE COURT OF APPEAL  
OF NEWFOUNDLAND AND LABRADOR**

**Citation:** *R. v. Pittman*, 2019 NLCA 28

**Date:** May 14, 2019

**Docket Number:** 201801H0090

**BETWEEN:**

LUKE PITTMAN

APPELLANT

**AND:**

HER MAJESTY THE QUEEN

RESPONDENT

**Coram:** Hoegg, O'Brien and Goodridge JJ.A.

**Court Appealed From:** Provincial Court of Newfoundland and Labrador  
St. John's

**Appeal Heard:** April 9, 2019

**Judgment Rendered:** May 14, 2019

**Reasons for Judgment by:** Hoegg J.A.

**Concurred in by:** O'Brien and Goodridge JJ.A.

**Counsel for the Appellant:** Derek Hogan

**Counsel for the Respondent:** Sheldon Steeves

**Hoegg J.A.:**

[1] Luke Pittman pleaded guilty to 50 offences of which nine concerned driving while disqualified contrary to section 259(4)(a) of the *Criminal Code*. Mr. Pittman drove while disqualified on three different dates, and on each of those dates he was bound by three different driving prohibition orders. Accordingly, he was charged and convicted of nine driving while disqualified offences. Mr. Pittman was also charged and convicted of another driving-related offence, that being the indictable offence of leaving the scene of an accident contrary to section 252(1)(b) of the *Code*.

[2] In addition to periods of incarceration imposed for the nine driving while disqualified offences, the sentencing Judge imposed five-year driving prohibition orders in relation to each of the nine offences pursuant to section 259(1) of the *Code*. However, he ordered that the three five-year prohibition periods respecting the offences committed on each of the three dates be served concurrently, resulting in three five-year periods of driving prohibition, which he ordered to be served consecutively to each other pursuant to section 259(2.1) of the *Code*. The driving prohibition period for the nine offences thus calculated to 15 years.

[3] The Judge then sentenced Mr. Pittman for the offence of leaving the scene of an accident. In addition to a period of incarceration, he imposed a ten-year driving prohibition to be served consecutively to the three other consecutive driving prohibition periods, saying:

“You are a nuisance behind the wheel of a car. From my perspective you have lost the privilege to operate a motor vehicle. You have had enough warnings. As soon as you get out of jail you go and you do it again.”

The total driving prohibition period thus calculated to 25 years.

[4] Mr. Pittman appeals the 10-year driving prohibition imposed in respect of his conviction for leaving the scene of an accident. He argues that the Judge had no authority to order a 10-year driving prohibition for his section 252 offence.

**Leave to Appeal**

[5] When an appeal concerns sentence only, leave to appeal is required (section 675(1)(b) of the *Code*). The test for leave to appeal sentence, set out at paragraph 8 of *R. v. Blok-Anderson*, 2016 NLCA 9, is whether the appeal “is frivolous in the sense of having no arguable basis or sufficient merit”.

[6] In this case the parties agree that the Judge erred in imposing the 10-year prohibition order. They agree that the maximum driving prohibition period that could have been imposed for Mr. Pittman's offence of leaving the scene of an accident is three years (section 259(2)(c) of the *Code*). When both parties agree that the Judge imposed a driving prohibition period that was not open to him to impose, arguable basis or sufficient merit is established. Accordingly, leave to appeal is granted.

## ANALYSIS

[7] When an offender is convicted of leaving the scene of an accident and the maximum period of incarceration for that offence is five years or less, a sentencing judge has the discretion to prohibit the offender from driving "during any period not exceeding three years" (section 259(2)(c) of the *Code*). The maximum period of imprisonment that could be imposed on Mr. Pittman for his offence of leaving the scene of an accident was five years (section 252(1.1)). Therefore, the maximum driving prohibition that the sentencing Judge could have imposed on Mr. Pittman for his offence was three years. Accordingly, the Judge erred in imposing the 10-year driving prohibition order. This is an error in principle which had an impact on Mr. Pittman's sentence. It therefore falls to this Court to impose an appropriate driving prohibition order in respect of Mr. Pittman's conviction for leaving the scene of an accident (*R. v. Lacasse*, 2015 SCC 64 at para. 44).

[8] Mr. Pittman makes two arguments on appeal. First, he argues that any lawful period of driving prohibition imposed for his breach of section 252(1)(b) of the *Code* should be served concurrently with the existing prohibition period of 15 years. He submits that consecutive service of any additional period of driving prohibition would be crushing to him, saying that his circumstances may be entirely different 15 years from now. He also submits that the ability to drive is very important to the ability to work and he would like to be able to legally drive sooner (in 15 years' time) rather than later (in 18 years' time) in order to enhance his chances for earlier gainful employment.

[9] It is well-established law that the sentence for offences which do not constitute a single criminal venture should be served consecutively (*R. v. Crocker* (1991), 93 Nfld. & P.E.I.R. 222 (Nfld. C.A.) at paras. 32 to 41 and *R. v. Hutchings*, 2012 NLCA 2 at para. 84). Mr. Pittman's offence of leaving the scene of an accident was committed before any of the other 49 offences for which he was sentenced on September 4, 2018. It was discrete in time, place, and circumstance from his other offences. It was a separate criminal venture.

Accordingly, any driving prohibition imposed for Mr. Pittman's section 252 offence should be served consecutively to any other driving prohibition periods to which Mr. Pittman is subject.

[10] I would add that the "crushing" argument touches on possible application of the totality principle. However, Mr. Pittman's argument does not fit well into the totality analysis framework. Sentences for the nine other driving offences are not before this Court. They have already been decided and they have not been appealed. It is not appropriate for this Court to undertake a totality analysis in respect of sentences that are not before it (*R. v. Barrett*, 2012 NLCA 46, at para. 31). Moreover, the totality principle has already been applied by the sentencing Judge in his imposition of the other prohibition periods.

[11] Mr. Pittman made a second argument at the appeal hearing. He submits that if this Court imposes a consecutive driving prohibition period for his offence of leaving the scene of an accident, a one-year driving prohibition period would be appropriate. He argues that that his section 252 offence occurred before he had any criminal record, and because it was first in time, his subsequent driving behaviours should not warrant the imposition of a longer prohibition period.

[12] The length of driving prohibition periods imposed for leaving the scene of an accident depends primarily on the circumstances of the offence. While Mr. Pittman committed this offence before he committed his other driving offences, his subsequent driving record and behavior can be legitimately considered as a sentencing factor. As noted by the Ontario Court of Appeal in *R. v. Stoddart*, (1987), 59 C.R. (3d) 134 (Ont. C.A.), subsequent behaviours suggest a poor attitude and do not bode well for rehabilitation (see also *R. v. Russell*, 1997 ABCA 337 at para. 10). That said, the fact that Mr. Pittman is already subject to 15 years of driving prohibition is a personal circumstance of his, which, like any other personal circumstance, can be legitimately considered in sentencing (*Barrett*, at para. 24). Nevertheless, 15 years hence is a long time away, so I would not put much weight on Mr. Pittman's subsequent driving behaviours in deciding an appropriate driving prohibition period.

[13] Reported cases respecting sentencing for the sole offence of leaving the scene of an accident are few. Several reported cases in this province which deal with this crime also involve other driving related offences, like impaired driving and driving while suspended. The following cases involve only the offence of leaving the scene of an accident.

[14] In *R. v. Brousseau*, 2006 NLTD 104, the offender hit a pedestrian while driving and did not stop his vehicle. When questioned by the police immediately after the accident, the offender denied any involvement in or knowledge of the accident. He later pleaded guilty to leaving the scene of the accident. The offender was 68 years old, and had a dated but unrelated criminal record. The sentencing Judge imposed an 18-month driving prohibition, noting that the offender no longer drove, which meant that he was at low risk to reoffend.

[15] In *R. v. C.W.* (2016), 378 Nfld. & P.E.I.R. 305 (NLPC), the offender, driving on a learner's permit, struck a parked vehicle and utility pole. She pleaded guilty for failing to remain at the scene of an accident. The Court imposed a six-month driving prohibition, acknowledging that the driving prohibition was lower than what would normally be imposed due to the offence being at "the lower end of the scale" and the fact that the offender was required to drive to work (at paragraph 37).

[16] Several reported cases from other jurisdictions, as discussed below, provide guidance.

[17] In *R. v. Aman*, 2012 ONCJ 654, a 25-year old first-time offender side-swiped another vehicle and drove away without stopping. A two-year driving prohibition was imposed.

[18] In *R. v. Schmitt*, 2011 ONCJ 546, an 18-year old offender did not remain at the scene despite realizing he had struck someone. The victim died in hospital the next day and the offender turned himself in the following morning. A two-year driving prohibition was imposed.

[19] In *R. v. Dhaliwal*, 2012 ABPC 393, the offender struck a pedestrian and dragged her body a short distance. He did not stop, leaving the victim lying on the roadway in critical condition. The victim died. The offender turned himself in after police arrived at his home to investigate the matter. A three-year driving prohibition was imposed.

[20] In *R. v. Ali*, 2010 ABPC 393, the offender struck a pedestrian who was crossing the street. After stopping and looking at the victim, the offender sped away. He turned himself in after learning the victim had died. The offender was young, with no criminal record, and remorseful. A three-year driving prohibition was imposed.

[21] In *R. v. Foley*, 2010 NSSC 449, the offender left the scene after colliding with a horse drawn wagon whose driver died at the scene. The offender's vehicle had no proper headlights and was uninsured. He did not turn himself in at the first opportunity when he was driven back to the scene of the accident but did so later that day. A three-year driving prohibition was imposed.

[22] In Mr. Pittman's case, we do not know whether the vehicle he struck resulted in any personal injury. We do know that Mr. Pittman was driving a stolen vehicle when he caused the accident, and that he fled the scene. He did not turn himself in, but pleaded guilty after police determined that he committed the offence through DNA investigation. It was Mr. Pittman's first offence.

[23] Upon review of the jurisprudence and consideration of the importance of the sentencing objectives of denunciation and deterrence for leaving the scene of an accident, I am of the view that the circumstances of Mr. Pittman's offence call for a two-year driving prohibition to be served consecutively to his other driving prohibition periods.

[24] In the result, Mr. Pittman is prohibited from driving for a total of 17 years.

[25] Order accordingly.

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L. R. Hoegg J.A.

I Concur: \_\_\_\_\_

F. P. O'Brien J.A.

I Concur: \_\_\_\_\_

W. H. Goodridge J.A.