

SUPREME COURT OF YUKON

Citation: *R. v. Johnson*, 2012 YKSC 14

Date: 20120216
Docket S.C. No.: 10-00574A
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

JASON DENNIS JOHNSON

Before: Mr. Justice L.F. Gower

Appearances:
Ludovic Gouaillier
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is a conditional sentence breach by Mr. Johnson. He was sentenced by me to a conditional sentence of 15 months on October 31, 2011, on a charge of assault causing bodily harm from September 24, 2010. I have re-read my reasons for sentence in that matter. I note that it was part of my consideration at that time that Mr. Johnson reportedly had done well on a previous conditional sentence from 2008 and had no breaches on his promise to appear or his process while he was on release awaiting sentencing for the assault causing bodily harm.

[2] What is aggravating in this case is that Mr. Johnson failed to report to his conditional sentence supervisor on Monday, February 6, and Wednesday, February 8, 2012, as directed. Previously, the conditional sentence supervisor, Ms. Clark, had directed Mr. Johnson to report to her by telephone on Mondays, Wednesdays and Fridays before 4:30 and, if she was unable to answer the phone, that a voice mail message would be sufficient. The reason this is aggravating is because Mr. Johnson is being allowed to serve his conditional sentence in his home community of Haines Junction, and there is no resident sentence supervisor in that community. That makes the telephone reporting even more important than it otherwise would be because the sentence supervisor cannot attend at the residence and do a 'knock and talk' check on him. Therefore, I agree with the Crown that ordinarily that kind of a breach might result in a significant collapse of the conditional sentence.

[3] The explanation by Mr. Johnson for his failure to report is that he was ill that week with the flu, was feeling depressed, was not getting out of the house, and he let it slip. However, he does not suggest that that is a reasonable excuse.

[4] To his credit, Mr. Johnson immediately contacted Ms. Clark on the Thursday, which I assume was February 9th, to apologize and to indicate that he had forgotten to report. Further to his credit, when Ms. Clark obtained a warrant for the breaches she advised Mr. Johnson of the warrant and he turned himself into custody in Whitehorse to the RCMP on Tuesday, February 14.

[5] He has been in custody since then, and tells me that he has an economic development workshop or meeting which he would like to attend in Whitehorse at the Yukon Inn this coming Saturday afternoon, which would be the 18th.

[6] The Crown seeks a conditional sentence suspension starting today for a period of seven days. Defence seeks a slightly shorter period of five days which, counsel submits, would be sufficient to deter and denounce Mr. Johnson for these breaches, but would still allow him to be released in time for the workshop this coming Saturday.

[7] Apparently, there has been some difficulty with Mr. Johnson being unmotivated to find work or attend programming in the past, as relayed by Ms. Clark. This workshop would appear to be a positive opportunity for him to kick start, perhaps, a new direction for him in terms of preparing himself for future mining work, which he says is likely to become available in May at the Prophecy Mine near Burwash Landing. In my view, it would be counter productive to impose a sentence which would prohibit Mr. Johnson from attending the Saturday workshop.

[8] I also note that both counsel are essentially recommending a short, sharp period of incarceration as a wake-up call to Mr. Johnson that these kinds of breaches will not be tolerated. Mr. Johnson has not, apparently, seen the inside of a jail cell since a sentence that was imposed in 2004. I mentioned his previous good conduct on a conditional sentence in 2008, and it appears that he was never arrested and placed in custody on the substantive offence of assault causing bodily harm which he is presently serving the conditional sentence for. So, the fact that Mr. Johnson has now been in

custody for two days and likely will be for another three, in all of the circumstances, seems sufficient in terms of satisfying the principles of denunciation and deterrence.

[9] I will therefore suspend the conditional sentence under s. 742.6(9)(c) commencing today for a period of five days.

GOWER J.