

# IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Corcoran*, 2008 YKSC 44

Date: 20080522  
Docket: S.C. No. 07-01503A  
Registry: Whitehorse

BETWEEN:

**HER MAJESTY THE QUEEN**

AND:

**THOMAS CORCORAN**

Before: Mr. Justice R.S. Veale

Appearances:  
Eric Marcoux  
Daniel Gellar

For the Crown  
For the Defence

## **REASONS FOR SENTENCE DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): Mr. Corcoran was convicted of possession of cocaine for the purpose of trafficking on April 27, 2007, at Upper Liard in the Yukon Territory. He was also convicted of being in breach of an undertaking by having certain weapons and ammunition in his position contrary to his undertaking.

[2] The circumstances of the offence are that the RCMP received certain information about Mr. Corcoran, and he was driving, I believe, through the Upper Liard area of the Yukon in a Blazer. He was stopped by the RCMP and arrested for possession of cocaine for the purpose of trafficking. The RCMP found three ounces of cocaine in the vehicle, which amounted to 93.1 grams of powder cocaine, which has a street value in

bulk in the amount of \$4,000, and if split into quarter gram amounts for sale would be of a value of \$7,500. Crown also found \$12,900 hidden in two socks and \$497 US currency in Mr. Corcoran's possession.

[3] They also found two full boxes of .357 ammunition, a hunting knife, and a smaller knife. They also found a straw, which had cocaine residue, and the straw was found in Mr. Corcoran's jacket. In addition, they found a small scale in the vehicle, and the police seized the vehicle. They did not have a search warrant until afterwards and they, at that time, executed the warrant, as I understand it, in the residence of Mr. Corcoran in Upper Liard and seized a small scale, which tested positive for cocaine. There were also four guns that were seized, a Model 60 .22 calibre rifle, a Marlin 30/30 lever action rifle, a 30/30 lever action Winchester rifle, and an air pellet hand gun. There was also another vehicle in front of the residence, and from that vehicle, as I understand it, there was a semi-automatic .22 calibre rifle seized.

[4] The Crown and defence have made a joint submission with respect to the appropriate sentence in this matter based on certain deficiencies with respect to the Crown's ability to prosecute the charges to a successful conviction, and I am going to take that into consideration in accepting the joint submission. These are matters that are in the knowledge, the specific knowledge, of the Crown and defence and not the knowledge of the Court, but I accept the submission of the Crown and the defence as officers of the Court.

[5] I am also advised that Mr. Corcoran has spent four and a half months in jail, and in this jurisdiction he is credited with 1.5 for that time, which amounts to seven months.

The joint submission with respect to the sentence is a 12-month conditional sentence, so the global sentence would be a 19-month sentence. Mr. Corcoran has been on bail supervision since September 10, 2007, and I understand from the submission of the Crown and defence that he has been able to live in Whitehorse and to work with Lynden Transport, which indicates that he has made some reasonable steps towards his rehabilitation.

[6] He does have a prior conviction for possession of a narcotic for the purpose of trafficking and that is over 20 years in age. He was sentenced at that time to three months incarceration and probation for two years.

[7] The granting of a conditional sentence requires the imposition of a sentence of imprisonment of less than two years and I must be satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2. I am satisfied from the submissions of the Crown and defence counsel that the conditional sentence would not endanger the safety of the community and would be consistent with an appropriate term of house arrest and, as well, an opportunity for Mr. Corcoran to continue on the path of rehabilitation, because Mr. Corcoran has to realize that if he returns to the drug business, it is going to be a very serious concern, because he can be brought back before this Court and sentenced for the remainder of his time under his conditional sentence in addition to any other sentences that might be given as a result of any new offence that occurs.

[8] I am also going to order a mandatory firearm prohibition of 10 years under s. 109 of the *Criminal Code*. The Crown has indicated they are prepared to return the 1994 Blazer and the two heirloom rifles, which I would assume are the Marlin 30/30 and the Winchester 30/30?

[9] MR. MARCOUX: It would be the Marlin 30/30 and the Model 60.

[10] THE COURT: Model 60? Those two guns will be returned but all other matters seized will remain seized and be forfeited.

[11] There will be a conditional sentence of 12 months to be served in the community on the following conditions:

1. Keep the peace and be of good behaviour and appear before the Court when required to do so;
2. Notify the Royal Canadian Mounted Police or the conditional sentence supervisor in advance of any change of name or address and promptly notify --

[12] Do you want to keep the Royal Canadian Mounted Police in that or do you just want the conditional sentence supervisor involved? I am talking about condition 2 in the previous --

[13] MR. MARCOUX: Yes, just the conditional sentence supervisor.

[14] THE COURT: Yes. So it will be:

2. -- notify the conditional sentence supervisor in advance of any change of name or address, and promptly notify the conditional sentence supervisor of change of employment or occupation;
3. Report to the conditional sentence supervisor immediately after this hearing and thereafter when and in the manner as directed by the conditional sentence supervisor;
4. Remain within the Yukon Territory unless you have the prior written permission of your conditional sentence supervisor;
5. Absolutely abstain from the possession or consumption of alcohol and illegal drugs; provide a sample of your breath and bodily fluids for the purpose of analysis upon demand by a peace officer or a conditional sentence supervisor who has reason to believe that you may have failed to comply with this condition;
6. Not attend any bar, lounge, off sales or other commercial premises whose primary purpose is the sale of alcohol;
7. Not to be found in any place where the sale and consumption of illegal drugs is known to be carried out;
8. Remain in your place of residence, which is presently the Stratford Motel, under terms of house arrest except with the prior written permission of your bail supervisor (sic) for your employment, for the purchase of foods and the necessities of life or for medical treatment. You must present yourself at the door or answer the telephone during reasonable hours for house arrest checks by the Royal Canadian Mounted Police or your

conditional sentence supervisor and failure to not remain in your residence at all times, except when you have the written permission to be elsewhere, is a presumptive breach of the condition;

9. Reside as directed by your conditional sentence supervisor and not change your residence without the prior written permission of your conditional sentence supervisor;
10. Not have in your possession any firearms or ammunition;

Is there a passport? Do you have a passport?

11. If you are the holder of a passport you are to deposit your passport with the conditional sentence supervisor, if he has a passport;

[15] He needs a passport, he cannot --

[16] MR. GELLAR: He needs a passport, yes.

[17] THE COURT: Yes, so if he has one he has to deposit it with his conditional sentence --

[18] MR. GELLAR: I believe that the passport is still in the possession of the RCMP, is it not?

[19] THE COURT: I will just indicate that he is -- being the holder of a passport, he is to deposit the passport with the conditional sentence supervisor who will provide it to him should his employment require its use.

[20] I should indicate, I guess, as an addition to condition 8, that the conditional sentence supervisor has the discretion to give him written permission for purposes of employment to travel into Alaska and British Columbia, and make all necessary inquiries to ensure that he has valid employment.

12. Not to attend within the village of Upper Liard or the town Watson Lake without the prior written permission of his conditional sentence supervisor;
13. Any such written permission from your conditional sentence supervisor to be away from your residence should be kept in your possession at all times, along with a copy of this recognizance.

[21] Are you paying attention?

[22] THE ACCUSED: Yes.

[23] THE COURT: What did I just say?

[24] THE ACCUSED: You said to keep the letters of permission on you and if I am in Upper Liard or if I am there for work purposes --

[25] THE COURT: So when you are --

[26] THE ACCUSED: I was just thinking of --

[27] THE COURT: When you are, at any time, away from your residence --

[28] THE ACCUSED: Have it on me.

[29] THE COURT: -- you are going to have the written permission of the conditional sentence supervisor on your person, because if you are challenged you will need it.

[30] THE ACCUSED: Yes, for sure.

[31] THE COURT: I will indicate that if you do not have it that it is a breach of the conditional sentence.

[32] THE ACCUSED: Yes.

[33] THE COURT: Anything further?

[34] MR. GELLAR: I do not know if it was an oversight, My Lord, the joint submission was that the conditional sentence be for a period of 12 months with the house arrest for nine months.

[35] THE COURT: Yes, it was. I agree and you can have it written so, Madam Clerk. And is there -- the last three months, then, there is no terms? There is no house arrest or curfew terms?

[36] MR. MARCOUX: No, Your Honour.

[37] THE COURT: So the house arrest terms are for nine months and there are no terms on the balance of three months. Thank you.

[38] MR. GELLAR: Thank you, My Lord.

[39] THE COURT: Anything further?

[40] MR. MARCOUX: Just one more thing, My Lord, if I may? Just for the weapons that will be returned, the issue with the RCMP is, of course, they can only return there to the lawful --

[41] THE COURT: I am sorry, I did not put that condition on, and that -- do you want that as -- I thought that those belonged to Ms. Thompson.

[42] MR. MARCOUX: Yes, but Ms. Thompson does not have any licences.

[43] THE COURT: Yes. Okay, I am just going to make that order in the air. It will be a separate order that is not part of the conditional sentence order, right?

[44] MR. MARCOUX: That is correct.

[45] THE COURT: Yes. So I will make the order then that the two heirloom weapons that we were referring to, the Model 60 .22 calibre rifle and the Marlin 30/30 lever action rifle may be returned to Ms. Thompson by the RCMP upon proof of satisfactory licensing.

[46] MR. MARCOUX: Thank you.

[47] MR. GELLAR: Thank you.

[48] THE COURT: Thank you.

[49] MR. GELLAR: And was there a stay of proceedings in with respect to this?

[50] MR. MARCOUX: I think I have already done that. I wonder if the clerk has entered that?

[51] THE COURT: I think he indicated that and if he has not, we will do that. Thank you.

[52] MR. MARCOUX: Yes.

[53] MR. GELLAR: Thank you.

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VEALE J.