Citation: *R.* v. *Allen*, 2012 YKTC 36

Date: 20120420
Docket: 10-00568A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

STEVE KELLY ALLEN

Appearances:
Wendy Miller — Counsel for the Crown
Malcolm Campbell — Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Mr. Allen has entered a guilty plea to having committed an offence under s. 253(1)(a) of the *Criminal Code*, and an offence under s. 259(4)(a).

[2] The circumstances are that on September 1, 2010, in Haines Junction, RCMP officers received a complaint of an impaired driver. A description of the vehicle was provided and it matched the description of a vehicle the owner had phoned in a complaint about the previous night. RCMP members went on patrol, located the vehicle. It did not pull over immediately and required a little more effort than usual on the part of the police officers to get the driver's attention. When the vehicle was pulled over, Mr. Allen was the driver of the vehicle and there were three passengers. It was noted that there was a strong odour of alcohol emanating from inside the vehicle and a

number of open bottles of liquor inside. The police officer knew Mr. Allen both in situations where Mr. Allen had been sober and impaired, and formed the opinion that Mr. Allen was operating the motor vehicle while impaired. Mr. Allen was also, at that time, on a driving disqualification pursuant to an impaired driving conviction, for which sentence was imposed October 9, 2009.

[3] Mr. Allen has a significant criminal record with a number of related offences. He was convicted in 1989, 1993, twice in 1995, once in 2002, and most recently in 2009, of offences directly related to impaired driving. He has no prior convictions for driving while prohibited. The Crown has filed notice of intention to seek greater punishment.

[4] Mr. Allen has 75 days of pre-trial custody. The circumstances are that he had been released on a promise to appear, and in January of this year, failed to attend court and subsequently turned himself in, and has chosen to remain in custody until today's date. The Crown's position with respect to disposition is that a sentence of nine months custody for the impaired offence and a consecutive two months custody for the s. 259 offence would be appropriate, followed by a five-year driving prohibition.

[5] Crown counsel relies on the range of sentencing that was discussed and set forth in the *R.* v. *Van Bibber* case, 2010 YKTC 49, in paras. 52 to 67. The Crown notes the mitigating factors of the guilty pleas, and the efforts of Mr. Allen, since the commission of the offence, to address his issues related to alcohol abuse. The aggravating factors the Crown relies on are his criminal record with this being his seventh directly related conviction; the fact that there were passengers and there was open alcohol in the vehicle. Crown submits that the principles of denunciation and deterrence are at the

forefront.

[6] Defence counsel's position is that Mr. Allen be sentenced to a period of 90 days intermittent on the impaired offence, taking into account the pre-trial custody with which he will be credited, with a concurrent sentence of 30 days on the s. 259(4)(a) offence. Counsel relies on the personal circumstances of Mr. Allen as set forth in the Pre-Sentence Report and *Gladue* Report and the opportunities for immediate further treatment available to him, as well as his guilty pleas and the fact that this matter was delayed to some extent by Mr. Allen's attempts to participate or put forward to the Court a curative discharge application, which has been abandoned.

[7] The personal circumstances of Mr. Allen are as follows: he is 43 years old today. He is a member of the Champagne/Aishihik First Nation. There has been background information and some relevant history of the Champagne/Aishihik First Nation put forward in the *Gladue* Report that was filed for today's sentencing.

[8] His parents attended residential school. This is an experience his mother has not talked to him about but his father has told Mr. Allen in the past that it was pretty rough being stuck in there. His father, who died in 1996, was involved in politics and often away from home. His mother is a resident of Whitehorse, who currently teaches the First Nations language course at F.H. Collins High School. To Mr. Allen's knowledge, neither of his parents were involved in the criminal justice system.

[9] He does recall as a child witnessing drinking parties and fights in the family home in what he describes as being overall a fairly chaotic childhood. He first consumed alcohol at approximately age seven or eight. He was drinking regularly by his teenage

years. He was consuming drugs starting at age nine and selling drugs by the time he was ten to 12. He was injecting hard drugs in his teens. He had a difficult relationship with his older brother when growing up that often resulted in Mr. Allen living outside of the home. He also had a strained and difficult relationship with his parents when he was growing up. He was subjected to fairly strict physical discipline in the home.

[10] He has a Grade 7 education, having been expelled in Grade 8 for selling drugs and fighting, and he indicated to the author of the Pre-Sentence Report that he mostly went to school in order to sell drugs and steal lunch money from the other kids. His previous upgrading attempts have been unsuccessful to date, although he has been doing some further upgrading or making attempts to do so through Yukon College while in recent custody awaiting sentencing. He has indicated that the Champagne/Aishihik First Nation is prepared to assist him with funding for further attempts to go to school and to become trade certified, and to become an alcohol and drug counsellor. Further, the Champagne/Aishihik First Nation has indicated in a letter filed that they will assist him with job searching.

[11] Mr. Allen left home in his early teens and moved to Vancouver in his mid-teens, essentially on his own, spending time in youth detention centres in the Vancouver area. He spent approximately ten years or so on skid row, selling drugs and pimping. He was pulled off Hastings Street by his father and taken to the land, where he went through what he stated were 23 days of extreme withdrawal. After that, he stopped his heroin use and needles, but to today's date has continued to live a fairly transient lifestyle. His period of employment with different employers from February to May of 2011 were the longest periods of employment he had ever engaged in in his life.

[12] He has health issues for which he is taking medication. He acknowledges he is a full-blown alcoholic and needs help. Since his offences, he has taken steps to address his alcohol issues. He attended and participated in the Three Voices of Healing Treatment Centre in British Columbia from January 13th to February 23, 2011, and placed himself into the Alcohol and Drug Services detox for nine days in September 2011, after having relapsed. He has taken Alcoholics Anonymous while he has been in custody on remand. At some point while in the Whitehorse Correctional Center, he has participated in the White Bison Program, although when exactly is unclear to me. His only previous periods of treatment were in Round Lake in 1986. He has indicated that he is willing to participate in further treatment and has been accepted into the ten-day healing camp run by his First Nations, May 21st to 31st, 2012.

[13] In the Pre-Sentence Report, he is considered to have a severe level of problems related to alcohol and a substantial level of problems related to drugs. On the LS/CMI, he is noted at being at a very high-risk level for further criminal conduct and need for treatment. He is described by the author of the Pre-Sentence Report as being:

> …entrenched in the criminal justice system since his adolescence. He appears to accept criminal others and their values and expressed hostility towards the criminal justice system …

[14] Mr. Allen has indicated to the author of the Pre-Sentence Report that he had not, at that point in time, entirely ceased his use of alcohol and drugs. The author of the PSR noted that it was difficult in the circumstances to recommend a community disposition for Mr. Allen on the basis of his criminal record and the risk assessments.

[15] Mr. Allen has support letters from Chief James Allen of the Champagne/Aishihik

First Nation, indicating his belief that Mr. Allen has begun, within the last two years, to take positive steps on a healing path and that he has his First Nation's support to continue to do so.

[16] The report dated February 23, 2011, from the Three Voices of Healing notes that Mr. Allen set treatment goals for himself of making a new start with sobriety, to seek full employment and anger management meetings. It was their impression that Mr. Allen had made a beginning towards achieving his goals and that with continued support he could be successful in his healing. They commended him for his participation despite the obvious struggles he had there with his anger and reactive behaviour, and difficulty in communicating or expressing some of the guidance that he had been given. He is noted to have worked with the elders willingly and openly as many issues they were encountering were discussed. His participation is noted to have devolved into some resistance at times when areas that were a trigger to him became apparent.

[17] The recommendations in that letter were that Mr. Allen continue counselling to address abandonment issues, healthy self-esteem, childhood abuse and trauma, building healthy relationships, anger management and communication skills; that he seek a healthy elder and continue to participate in cultural ceremonies and activities; that he continue to attend AA meetings, find a sponsor and commit to a home group; that he continue to participate in a fitness and gym program; that he seek out a medical doctor regarding ongoing health issues; and that he seeks out career counselling in regards to a desire to work with youth as a counselor.

[18] So his expressions to me in court today about his desires to, at some point, once

he has extricated himself from his addiction and substance abuse issues, and non-pro social lifestyle, are not something that has just recently been made up by him, but something that he had indicated at an earlier time, over a year ago when he was in treatment, which enhances the credibility of what he said to me in court today.

Analysis:

[19] Impaired driving is an offence for which the sentencing purposes of denunciation and deterrence, both specific and general, are at the forefront. As I have stated in *Van Bibber*, *supra,* in paras. 71 and 72:

> I could go on at length and cite numerous excerpts and case law and publications that attempt to capture the full nature and impact of this crime. I will not, and will leave it at this: Drinking and driving offences are commonly committed crimes that all too often cut a destructive and devastating swath through Canadian society, and which all too frequently have horrendous and far-reaching consequences. This is especially true in communities such as the Yukon or within the Yukon, which, I take judicial notice of, is often said to have alcohol addiction rates above the national average. Small communities such as Pelly Crossing are particularly susceptible to suffering from the problems that arise from substance abuse issues, of which alcohol is at the forefront and impaired driving all too common.
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> As such, general and specific deterrence as well as denunciation are always very important and generally at the forefront in the sentencing of impaired drivers, in particular, repeat offenders. The protection of the public from these offenders is of paramount consideration.

[20] I reviewed the general range of sentencing for repeat impaired driving offenders in paras. 52 to 67 of *Van Bibber, supra,* and concluded in para. 67 that:

> It is clear from all the above cases that there is a wide range of sentence available for repeat impaired driving offenders and each case will be marked by the similarities and differences between it and other cases.

[21] 718.2(e) of the *Criminal Code* says that:

> All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[22] This section has been recently considered by the Supreme Court of Canada in *R.* v. *Ipeelee*, [2012] S.C.J. 13. In para. 80 the Court stated:

> An examination of the post-*Gladue* jurisprudence applying s. 718.2(e) reveals several issues with the implementation of the provision. These errors have significantly curtailed the scope and potential remedial impact of the provision, thwarting what was originally envisioned by *Gladue*.

[23] With respect to the error of requiring that an offender establish a causal connection between his or her background factors in the commission of the current offence, the Court stated in paras. 82 and 83 that:

> This judgment displays an inadequate understanding of the devastating intergenerational effects of the collective experiences of Aboriginal peoples. It also imposes an evidentiary burden on offenders that was not intended by *Gladue*. As the Ontario Court of Appeal states in *R.* v. *Collins*, 2011 ONCA 182, 277 O.A.C. 88 at paras. 32 to 33:
>
>> There is nothing in the governing authorities that places the burden of persuasion on an Aboriginal accused to establish a causal link between the systemic and background factors and commission of the offence….
>>
>> As expressed in *Gladue*, *Wells* and *Kakekagamick*, s. 718.2(e) requires the sentencing judge to “give attention to the unique background and systemic factors which have played a part in bringing the particular offender before the courts:” *Gladue* at para. 69. This is a much more modest requirement than the causal link suggested by the trial judge.
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> As the Ontario Court of Appeal goes on to note in *Collins,* it would be extremely difficult for an Aboriginal offender to ever establish a direct causal link between his circumstance and his offending. The

> interconnections are simply too complex. The Aboriginal Justice Inquiry of Manitoba describes the issue, at p. 86:
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> > Cultural oppression, social inequality, the loss of self-government and systemic discrimination, which are the legacy of the Canadian government's treatment of Aboriginal people, are intertwined and interdependent factors, and in very few cases is it possible to draw a simple and direct correlation between any one of them and the events which lead an individual Aboriginal person to commit a crime or to become incarcerated.
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> Furthermore, the operation of s. 718.2(e) does not logically require such a connection. Systemic and background factors do not operate as an excuse or justification for the criminal conduct. Rather, they provide the necessary context to enable a judge to determine an appropriate sentence. This is not to say that those factors need not be tied in some way to the particular offender and offence. Unless the unique circumstances of the particular offender bear on his or her culpability for the offence or indicate which sentencing objectives can and should be actualized, they will not influence the ultimate sentence.

[24] With respect to the irregular and uncertain application of *Gladue* principles to serious or violent offences, the Court stated, in para. 85:

> Whatever criticisms may be directed at the decision of this Court for any ambiguity in this respect, the judgment ultimately makes it clear, at para. 82, that sentencing judges have a *duty* to apply s. 718.2(e): "There is no discretion as to whether to consider the unique situation of the Aboriginal offender; the only discretion concerns the determination of a just and appropriate sentence. Similarly in *R.* v. *Wells*, [2000] 1 S.C.R. 207, Iacobucci reiterated at para. 50 that
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> > [t]he generalization drawn in *Gladue* to the effect that the more violent and serious the offence, the more likely as a practical matter for similar terms of imprisonment to be imposed on aboriginal and non-aboriginal offenders, was not meant to be a principle of universal application. In each case, the sentencing judge must look to the circumstances of the aboriginal offender.

Finally, the Court stated, in paras. 86 and 87, that:

> In addition to being contrary to this Court's direction in *Gladue*, a sentencing judge's failure to apply s. 718.2(e) in the context of serious offences raises several questions. First, what offences are to be considered serious for this purpose? As Ms. Pelletier points out: Statutorily speaking, there is no such thing as a 'serious' offence. The *Code* does not make a distinction between serious and non-serious crimes.

Moving down:

> Trying to carve out an exception from *Gladue* for serious offences would inevitably lead to inconsistency in the jurisprudence due to "the relative ease with which the sentencing judge can deem any number of offences to be 'serious.'" … It would also deprive s. 718.2(e) of much of its remedial power, given its focus on reducing overreliance on incarceration. A second question arises: who are the courts sentencing if not the offender standing in front of them? If the offender is Aboriginal, then courts must consider all the circumstances of that offender, including the unique circumstances described in *Gladue*. There is no sense comparing the sentence that a particular Aboriginal offender would receive to the sentence that some hypothetical non-Aboriginal offender would receive, because there is only one offender standing before the court.
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> The sentencing judge has a statutory duty, imposed by s. 718.2(e) of the *Criminal Code*, to consider the unique circumstances of Aboriginal offenders. Failure to apply *Gladue* in any case involving an Aboriginal offender runs afoul of this statutory obligation. As these reasons have explained, such a failure would also result in a sentence that was not fit and was not consistent with the fundamental principle of proportionality. Therefore, application of the *Gladue* principles is required in every case involving an Aboriginal offender, including breach of an LTSO, and a failure to do so constitutes an error justifying appellate intervention.

[25] While it is true in the case of every offender that the sentencing judge must not deprive an offender of liberty if less restrictive sanctions are appropriate and, further, that all available sanctions that are reasonable in the circumstances must be considered, it is necessary that particular attention be paid to the circumstances of Aboriginal offenders. Doing so in many cases will require creative resolutions that give

effect to all the purposes and principles of sentencing. It is a required part of defence counsel’s role, unless otherwise instructed by their client, and of Crown counsel’s role in their quasi-judicial function, unless the offender waives his or her *Gladue* rights to give effect to s. 718.2(e) in their preparation for and submissions at the sentencing hearing. Finally, the sentencing judge shall pronounce a sentence that reflects a consideration of the unique circumstances of the Aboriginal offender that is before him or her. While mandatory minimum sentences and the unavailability of conditional sentences for some offences may limit the options available to the sentencing judge, such options that are available must be considered and can be utilized in determining the appropriate sentence so long as the sentence, in the end, is just and fair, and finds and strikes an appropriate balance and consideration of all the applicable purposes and principles of sentencing in the circumstances of the case.

Sentence:

[26] As notice has been filed, the minimum sentence Mr. Allen can receive for the s. 253(1)(a) offence is four months custody. I find that such a sentence would be below the appropriate range of sentencing for an offender. The sentence of nine months sought by Crown counsel is certainly within the appropriate range, based upon the case law in the Yukon for an offender with the criminal conviction history Mr. Allen comes to the Court with, for having committed similar offences. However, I find that in order to give full effect to all the purposes and principles of sentencing, including in particular s. 718.2(e), that is not the sentence I should impose.

[27] Mr. Allen’s history and risk factors certainly do not present as providing an

optimistic or hopeful future for his being involved in pro-social and non-criminal behaviour. However, it is clear that he has taken some positive steps towards addressing his addiction issues and towards separating himself from his destructive lifestyle. There is an immediate opportunity for him to continue doing so by attending at the healing camp in May of this year. To deny him the opportunity to participate in this healing camp in order to further incarcerate him for a relatively short period of time is not only not in his best interests, it is not in the best interests of society. Mr. Allen was in the community from September 2010 until he surrendered himself into custody in February 2012 without having committed further offences. He has an almost immediate opportunity to continue his relatively recent, more proactive and positive behaviour towards putting his addictive and destructive lifestyle behind him. I am satisfied that what can be achieved in terms of denunciatory effect and general and specific deterrence, and what can best protect society overall, can be achieved by the imposition of a sentence that requires Mr. Allen to serve a further period of custody yet still be able to attend the healing camp in May.

[28] The sentence will be as follows: Firstly, with respect to the credit for pre-trial custody, I am going to allow 1.5 to 1 for the entirety of the 75 days. I am satisfied that to do so accords with the reasoning in *R.* v. *Vittrekwa,* 2011 YKTC 64. The custodial summary provided by the Whitehorse Correctional Centre does not address the issues of programming and employment, which accounts for two-thirds of the remission a serving inmate can earn. Counsel for Mr. Allen submitted that his client had not been offered or directed to participate in any employment, as a prisoner serving a sentence is given priority. He further submitted that Mr. Allen has participated in whatever

counselling or educational opportunities have been available and has not declined to follow any direction from his case worker in that regard.

[29] Crown counsel indicated that the submissions of counsel on these points were sufficient in the circumstances and that evidence to substantiate these submissions would not be required.

[30] While it is apparent from the WCC Report that Mr. Allen's behaviour while on remand has not all been positive, I am aware, from the evidence before me in *Vittrekwa, supra,* that a failure to be wholly compliant does not necessarily result in a determination that there should be deductions in earned remission. Further, most of the negative behaviours described are not, in my opinion, particularly serious, some being as limited as verbal abuse. With respect to the most serious allegation of encouraging inmates to disobey direct compliance orders from WCC staff, counsel for Mr. Allen submitted that, subsequent to the preparation of the WCC Report, Mr. Allen was found to have not been responsible for the alleged conduct. He had, by then, however, spent eight days in segregation.

[31] In all these circumstances, therefore, Mr. Allen will receive credit for 113 days pre-trial custody. In addition to the 113 days credit, he will be sentenced to a period of 90 days to be served intermittently as follows: He will remain in custody at the Whitehorse Correctional Centre and be released May 20th at 7:00 a.m. and surrender himself back into custody at 7:00 p.m. June 1st, and there be incarcerated until the sentence has been served in full. While not in custody, Mr. Allen is required to obey the following terms of a probation order:

1. You are to keep the peace and be of good behaviour;

2. You are to appear before the Court when required to do so;

3. You are required to attend Christmas Bay Healing Camp to be held May 21st to 31st, 2012, and abide by any of the rules of that healing camp;

4. You are to remain within the Yukon Territory;

5. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;

6. You are to not attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;

7. You are to reside as directed by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;

As I am uncertain exactly where you will be the night of May 20th or May 21st, it will be necessary that unless you are at the healing camp, you obtain a residence;

I am also going to include a term that:

8. You report to a Probation Officer immediately upon your release from custody or as otherwise directed by your Probation Officer, and report thereafter when and in the manner directed by the Probation Officer.

As I am again, not certain how this will work with release and transportation to the camp, it will be important that you contact Adult Probation prior to your release from

custody, and obtain such directions from them as are necessary, in order to ensure that you are compliant with the term that you report. You may not be able to physically report, if your transportation to and from the camp prevents you, or the day of release and availability, but nothing precludes you from making any contact with Adult Probation prior to your release in making such arrangements as are necessary;

[32] You will also be subject to a driving prohibition, the minimum of which is three years. Your prohibition will be for a period of four years, and you shall be prohibited from operating a motor vehicle on any street, road, highway or other public place for that period of time. That is in addition to any other punishment that has been imposed.

[33] The effective total sentence for the s. 253(1)(a) of 203 days or approximately six and three-quarters months, is at the low end of the range of sentencing; however, it is part of a global sentence and must be considered in light of this.

[34] Following the intermittent sentence, for the s. 259(4)(a) offence, there will be a consecutive sentence of 60 days to be served conditionally in the community. While Mr. Allen's antecedents and risk factors raise some concerns with respect to his ability to comply with the requirements of a conditional sentence, I find that in the circumstances of Mr. Allen and this offence that a conditional sentence accords with the requirements of s. 742.1 and the purposes and principles of sentencing. A deterrent and denunciatory effect can be achieved through the imposition of a conditional sentence and in this case a sentence of 60 days is on the higher end of the range for an offender with no prior criminal conviction for this offence. Further, there is a strong rehabilitative purpose behind the entirety of this sentence, and compliance with the restrictive terms of a conditional sentence for this period of time will strike the appropriate balance of the

rehabilitative purpose of sentencing and the other purposes and principles.

[35] The terms of the conditional sentence will be as follows:

1. You are to keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Report to a Supervisor immediately upon your release from custody and thereafter when required by the Supervisor, and in the manner directed by the Supervisor;
4. Remain within the Yukon Territory unless you have written permission from your Supervisor or the Court;
5. Notify the Supervisor or the Court in advance of any change of name or address; and promptly notify the Court or the Supervisor of any change of employment or occupation;
6. You are to reside as directed by your Supervisor and not change that residence without the prior written permission of your Supervisor;
7. For the first 30 days of this conditional sentence order, you are to remain within your place of residence except with the prior written permission of your Supervisor; you must present yourself at the door or answer the telephone during reasonable hours to ensure you are complying with this condition. Failure to do so will be a presumptive breach of this condition;
8. For the next 30 days, you are to abide by a curfew by remaining within your place of residence between the hours of 11:00 p.m. and 6:00 a.m. daily, except with the prior written permission of your Supervisor; you must present yourself at the door or answer the telephone during reasonable

hours for curfew checks. Failure to do so will be a presumptive breach of this condition;

9. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
10. You are to not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
11. You are to take such alcohol and drug assessment, counselling or programming as directed by your Supervisor;
12. You are to take such other assessment, counseling and programming as directed by your Supervisor;
13. You are to participate in such educational or life skills programming as directed by your Supervisor,
14. You are to make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;
15. You are to provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities you have been directed to do pursuant to this conditional sentence order.

[36] Sixty days is not a long time to be involved in any counselling and programming and I had considered the imposition of a probation order. The Crown had not sought one, and in the end, I am not satisfied that I need to impose a probation order in this

case. Frankly, you will either decide to follow the pathway towards your healing and your non-use of alcohol and drugs or you will not, and I believe that the probation order, in your case, will not be of such assistance to your rehabilitation as it would need to be for me to impose it.

[37] You have the power to make that difference in your life, and the conditional sentence, at least with these terms, gives you the opportunity to at least begin the first steps in the community to link up to such resources that will be available to you. With respect to employment, it might appear that it is hard to do that when you are on house arrest, but there are ways to be in contact with individuals, and you can be sure that if you are able to gain employment that you will, in all likelihood, be given the permission you need to be outside of your residence to do that, or even if you have reasonable opportunities to attend for interviews, you will in all likelihood be granted permission as long as you keep your Conditional Sentence Supervisor well informed and obtain the permission from the Supervisor. So the fact that you will be on house arrest for 30 days and a curfew afterwards does not impede your ability to do that in any meaningful way.

[38] The reason I have not put you on a house arrest for the entirety of the time is that I want the transition effect of a curfew for the second month. Normally, on a conditional sentence, it is house arrest for the entirety of the conditional sentence. As in some other cases, it is not for the entirety of your conditional sentence.

[39] Are there any terms of the intermittent sentence or the conditional sentence that counsel wish to address?

[40] MR. CAMPBELL: No, Your Honour.

[41] THE COURT: I am going to waive the victim fine surcharges.

[42] MS. MILLER: Your Honour, is there a prohibition on the 259 charge? I believe that's --

[43] THE COURT: I did not see a mandatory prohibition on the 259 charge. I went and looked through that. I know that there is a discretionary prohibition on some of the offences, but I am satisfied to attach it simply to the 253 offence.

[44] MS. MILLER: Thank you.

[45] THE CLERK: Your Honour, the curfew times?

[46] THE COURT: 11:00 p.m. to 6:00 a.m.

[47] THE CLERK: Thank you. And the remaining counts?

[48] MS. MILLER: Those are all stayed.

[49] THE COURT: Stay of proceedings on the remaining counts.

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COZENS C.J.T.C.