

Citation: *R. v. Collins*, 2012 YKTC 40

Date: 20120216
Docket: 11-00267A
Registry: Whitehorse

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

REGINA

v.

SHANE DANIEL COLLINS

Appearances:

Keith Parkkari
Robert Dick

Counsel for the Crown
Counsel for the Defence

RULING ON APPLICATION

[1] COZENS C.J.T.C. (Oral): I will frame what I am doing like this for now without taking a lot of time to do it because, obviously, this is a clause that we use continuously in probation orders and conditional sentence orders and bail orders under this Court, and I am actually surprised it has not raised its head regularly before on this issue. I am going to make it clear that this is a preliminary ruling in this breach hearing that I am making and, I think, in discussion with the parties, I understand that that is what I am doing right now rather than dealing with it all, I am making a preliminary ruling on the issue of reasonable hours.

[2] That Shane Collins was sentenced to a conditional sentence for a period of four months on October 14, 2011, which would, other than the issuance of the warrants,

have the conditional sentence be over by now. However, the warrant was issued January 23 and not executed, I do not believe, until the 29th, and so there may be some issues of remaining time on the conditional sentence, which I am not going to get into today.

[3] He has been brought back before the Court on an allegation that on January 22nd an RCMP constable attended at his residence based on some information that he had in relation to an unrelated matter, but coupled with information that Mr. Collins may be outside of his residence. He attended at the residence at 1:18 in the morning, knocked on the door for five to eight minutes, and then subsequently telephoned the phone number. He was able to confirm that he had the right address by looking through the door and seeing some mail. There was no answer at the door.

[4] The Crown's position is that Mr. Collins is in breach of his conditional sentence that requires him to at all times remain within his place of residence, except with the prior written permission of his Conditional Sentence Supervisor, except for the purpose of education or employment, including travel directly to and from education or employment, and including time during the day to perform personal tasks. "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."

[5] The preliminary information before me is, is 1:18 in the morning a reasonable hour? If it is not a reasonable hour, then the presumptive nature of this condition disappears and we are in a situation where the Crown will have the evidence that it knocked at 1:18 and the question is whether that evidence meets the requirement under

s. 742.6 to establish that a breach occurred. Obviously, whether the presumption applies or does not apply may make an impact with respect to defence counsel's decision as to whether to put his client on the stand.

[6] Crown was able to satisfy me that the purpose for the officer's being at the door, although linked to an unrelated matter, certainly formulated itself into a curfew check. So I do not have a problem that they were there for a curfew check, albeit in conjunction with and related to another matter.

[7] My problem is, 1:18 in the morning, whether that is or is not a reasonable hour. The only information that I have with respect to the hours that Mr. Collins is normally awake is that he did have permission to be out for work from 2:00 p.m. to 11:00 p.m. I find that as a general principle, reasonable hours are not going to include hours such as 1:18 in the morning. I am not going to put a top and bottom end on it, and I am going to say that is a general principle that, of course, can, based on the evidence, vary with respect to certain individuals, individuals who work different shifts or who are known to be awake at that time regularly. It may be different, but I do not have any of that kind of information before me. So as such, I am finding that 1:18 in the morning is not a reasonable hour that required Mr. Collins to present himself at the door or answer the telephone in order to avoid a presumption that he has breached this condition.

[8] That leaves the Crown in the situation where the evidence before me is that they knocked on his door at 1:18 in the morning for five to eight minutes and phoned, and there was no answer, and the Crown can rely on that as evidence, absent the presumption that the Crown would state is sufficient to satisfy their onus under s. 742.6.

That then shifts it to defence counsel as to whether they are content to argue that the evidence is insufficient, does not meet the threshold or whether defence wishes to call evidence on its own.

[9] That is my ruling at this point in time. It was not a reasonable hour; therefore, the presumption does not apply. In the absence of the presumption, Crown has the ability to rest on the evidence that it has, nonetheless, that he was outside or not in his house. Whether that is sufficient is an issue for the Crown to consider when it wishes to rely on that evidence, and then if the Crown wishes to proceed on the basis of that evidence and call no more, then it shifts to Mr. Dick as to whether he wishes to call evidence or not.

COZENS C.J.T.C.