

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Judge Faulkner)

REGINA

v.

WAYNE WENDELL JACKSON

Kevin Drolet

Appearing for Crown

Lynn MacDiarmid

Appearing for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Wayne Wendell Jackson has entered pleas of guilty to six offences, all contrary to the *Criminal Code of Canada* with respect to a series of events that began on January 28th of this year. On that day, the accused was at the Superstore in Whitehorse, where he attempted to steal a VCR.

Apparently, after he had made attempts to conceal the VCR under his jacket, he, in fact, put the VCR back and left the store saying to the clerk, "Don't call the police because I have changed my mind."

[2] With respect to that offence, he was charged with theft and has entered a guilty plea. It must also be noted, with respect to that matter, that a condition of his release was that he not attend at the Qwanlin Mall where the Superstore is located.

[3] On the 1st of February, the accused found himself at the Canadian Tire store in Whitehorse, where he attempted to steal some boots. He was stopped by security staff, but he told the security guard, who was attempting to arrest him, that he, Mr. Jackson, was HIV positive and threatened to spit in the guard's face. The guard, not unnaturally, backed away and Mr. Jackson was not arrested.

[4] Two days later, on the 3rd of February, Mr. Jackson was back at the Canadian Tire store, where he, again, attempted to steal merchandise and, again, was stopped by security staff who told him he was under arrest. At this point, the accused pulled out two hypodermic syringes and told the security staff that he had AIDS, the clear implication being that he might attempt to stab the guards with the syringes. Again, the security guards withdrew and the accused made his escape.

[5] With respect to those incidents, Mr. Jackson has entered a guilty plea to a charge pursuant to s. 267(a) of the *Code*.

[6] Later that same day, the accused was arrested at the Qwanlin Mall. This, of course, put him in breach of his release conditions. It should also be noted that, at the time of his arrest, he had two hypodermic needles in his possession.

[7] With respect to that matter, Mr. Jackson has entered a guilty plea to a charge contrary to s. 145(5.1) of the *Code*.

[8] On March the 6th, Mr. Jackson was in Extra Foods where he attempted to steal some meat. Again, he was approached by store personnel.

[9] With respect to the stealing of the meat, Mr. Jackson has entered a plea of

guilty to a charge of theft.

[10] But much more significantly, on the same date and occasion when the security staff approached Mr. Jackson with respect to the meat, the accused, again, pulled out hypodermic syringes, told the store staff that he was HIV positive, and made jabbing motions towards the store staff, the result being that they backed away and the accused fled.

[11] With respect to that matter, Mr. Jackson has entered a guilty plea, again, to a charge pursuant to s. 267(a) of the *Code*.

[12] Finally, again with respect to the 6th of March, Mr. Jackson has entered a guilty plea to a charge contrary to s. 145(5.1) of the *Code*, because, by being in the Qwanlin Mall where the food store is located, he was, again, in breach of his release conditions.

[13] Mr. Jackson has amassed a six-page criminal record, including some 80 prior convictions. Fifty-seven of these are for property offences. Eleven are matters with respect to process or administration of justice. Four involve either violence or weapons offences.

[14] The present circumstances, in my view, reflect a serious escalation in the criminal behavior exhibited by this offender. It would probably be no surprise to note that Mr. Jackson is the product of a broken home, was raised as a government ward, and now is a drug addict. Much of his criminal behavior is, undoubtedly, connected to his need to obtain drugs.

[15] Also of significance, with respect to both Mr. Jackson's personal circumstances and the circumstances of these offences, is that Mr. Jackson is now HIV positive, undoubtedly as a result of intravenous drug abuse.

[16] Now I can scarcely imagine the fear, both immediate and ongoing, that Mr. Jackson would have caused by threatening to infect the store staff that he encountered with HIV. Indeed, one of the clerks said that he would have been less afraid if Mr. Jackson had confronted him with a loaded gun.

[17] It is at once obvious that these were despicable and terrifying acts. Given the egregious circumstances of these offences, it is clear that protection of the public must be the paramount consideration in sentencing.

[18] I should add that while it is obvious that Mr. Jackson needs addictions treatment and counseling, it is also clear that such treatment will have to be offered to him in a closed setting.

[19] In all the circumstances, including the background and criminal record of this accused and the circumstances of these offences, I am satisfied that a sentence in the range approaching three years would be entirely appropriate.

[20] The accused, of course, is entitled to credit for the time that he has served to date, amounting to some 42 days. I am, therefore, prepared to accede to what is, effectively, a joint submission that the accused be sentenced to a further two and a half years in a federal penitentiary.

[21] The sentences will be as follows, Mr. Jackson. With respect to Count 1, you

are sentenced to a period of imprisonment of three months. With respect to Count 3, nine months consecutive to any other sentence; On Count 5, three months consecutive to any other sentence; On Count 6, three months consecutive to any other sentence; On Count 7, one year consecutive to any other sentence; On Count 10, three months concurrent. The total effective sentence, then, is one of two and one-half years in a federal penitentiary in addition to time already served.

[27] There will also be an order that you provide samples of bodily substances for the purpose of DNA analysis and banking. I have already signed that order. Further, pursuant to the provisions of the *Criminal Code*, you are prohibited from having in your possession any firearm or ammunition or explosive substance for the rest of your life, and I direct that any such items now in your possession or control be surrendered forthwith to the R.C.M. Police at Whitehorse, Yukon. In the circumstances, the surcharges are waived.

[28] MR. DROLET: One housekeeping matter, Your Honour. I would ask that the hypodermic syringes, which have been seized by the police, be forfeited and destroyed.

[28] THE COURT: They are forfeited and should be destroyed.

FAULKNER T.C.J.