

Citation: *R. v. Johnson*, 2013 YKTC 46

Date: 20130510
Docket: 12-00841
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

JESSICA RACHELL JOHNSON

Appearances:
Terri Nguyen
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): This is the matter of Jessica Johnson. She has entered a guilty plea to a drug trafficking charge, contrary to s. 5(1) of the *Controlled Drugs and Substances Act* relating to her attempt to pass a black cloth bag taken from her purse to her co-accused while in the courtroom for a preliminary hearing. The bag contained some marihuana, two cigarettes and matches. She was arrested. During transport, unusual movement was observed. The police later located two syringe packs on the floor of the police vehicle.

[2] A strip search, which was conducted later, netted a significant amount of drug paraphernalia both on and in her person, including a marihuana pipe, crack pipe, syringe, papers, and things of that nature.

[3] She has a limited, but unrelated, criminal record. The Crown is seeking a sentence in the range of 10 to 12 months; defence is suggesting that six to eight months is appropriate.

[4] Ms. Johnson is 22 years of age, a member of the Kluane First Nation. She clearly has significant issues with drugs, but has sought assistance while in custody, including counselling with the Elizabeth Fry Society, completing the White Bison Program, and counselling with Evann Lacosse from Kwanlin Dun.

[5] There have been cases provided to me. None of these is directly on point, which is not unusual, but they do provide some guidance. On the high end and probably least relevant is *R. v. B.J.B.*, [2005] N.S.J. No. 258, which involved a conspiracy to smuggle 50 grams of hash into a jail that resulted in the 19-year-old offender receiving a two-year sentence. He did have a related record.

[6] Next we have *R. v. Rathwell*, [1988] B.C.J. No. 1610 (B.C.C.A.), which involved a bag with some marihuana, belonging to the accused, found in a courthouse bathroom with a note that was inconsistent with personal use. He had a prior related conviction and received a nine-month sentence.

[7] The last case is *R. v. Klassen*, [2008] Y.J. No. 58. There was an unrelated record, and the facts involved an attempt to pass a marihuana joint, plus .4 grams of crack cocaine to an inmate in a custodial facility. She received a sentence of four months.

[8] In terms of considering the facts that are before me, I must say that to not only bring drugs into the courthouse, but into the actual courtroom and then attempt to pass them while court was in session, demonstrates, in my view, an utter lack of respect for the Court and a flagrant contempt for the law. In such circumstances, denunciation and deterrence can be the only sentencing principles. The nature of the conduct demands that a clear message be sent.

[9] When I consider the conduct in light of the cases that have been filed, I do see it as significantly more serious than the *Klassen, supra*, case.

[10] With respect to the *Rathwell, supra*, case, that individual engaged in conduct that was less serious, but, on the other hand, had a significantly more serious record, including related convictions.

[11] I have considered the fact that Ms. Johnson has apologized for her behaviour and appears to recognize the gravity of the offence. But, as I said, I am of the view that denunciation and deterrence do require a significant sanction to send the message that such conduct, as it exhibits such a blatant disregard and disrespect for the Court, warrants a significant sentence. In my view, a sentence of 10 months is appropriate.

[12] Ms. Johnson has already served six months in pre-trial custody. There is a question that has been raised with respect to credit. There was a s. 524 application. The law, I would say, is not settled at this point about whether or not that allows for me to give enhanced credit on the basis of lost earned remission.

[13] However, given the nature of the conduct in this particular case, I am satisfied this is not the case in which to resolve that particular issue. I am satisfied that six months' credit is appropriate, reducing the sentence to one of four months still to be served.

[14] Given the nature of the offence, DNA and firearms orders are both required, so I would make the order that Ms. Johnson provide such samples of her blood as are necessary for DNA testing and banking. Ms. Johnson, you will also be subject to an order prohibiting you from having in your possession any firearms, ammunition, or explosive substances for a period of 10 years. The victim fine surcharges are waived in light of her custodial status.

[15] THE COURT: I believe that leaves us with Count 2.

[16] MS. NGUYEN: That will be withdrawn.

[17] THE COURT: Thank you.

RUDDY T.C.J.