Citation: *R.* v. *Asuchak*, 2011 YKTC 83 Date: 20111212
Docket: 11-00104
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Judge Faulkner

REGINA

v.

RONALD RAY ASUCHAK

Appearances:
Jennifer Grandy Counsel for the Crown
John Bethell Counsel for the Defence

RULING ON *CHARTER* APPLICATION

[1] FAULKNER T.C.J. (Oral): This is an application by the accused, Ronald Asuchak, for a judicial stay based on an alleged breach of his right under s. 11(b) of the *Charter* "to be tried within a reasonable time."

[2] Mr. Asuchak was arrested on April 21, 2011, and charged with, amongst other things, possession of cocaine for the purpose of trafficking. Shortly thereafter, he was denied bail and he has been in custody ever since.

[3] Mr. Asuchak first entered a plea and indicated he wanted a trial on August the 5th of 2011. On that same day, December 5th and 6th were fixed for trial. In the result, the accused's trial commenced within seven and a half months of his arrest and four months to the day after he indicated that he wanted a trial. I accept that it has

undoubtedly been stressful and unpleasant for the accused to await trial in custody. I accept that efforts should be made to have trials as soon as possible for persons that have been detained in custody, and I accept that what is a reasonable delay may be less if one is in custody. However, in my view, the length of delay here is not sufficient to suggest that Mr. Asuchak has not been tried within a reasonable time.

[4] There were two defence counsel initially, which, of course, made the finding of acceptable dates more difficult since more persons had to be accommodated. Ms. Pollak, who represented the accused, did offer dates in August, but this was not realistic in the circumstances. The next dates on which she was available were in late November, and in the result the trial date was fixed for and, in fact, did commence by December 5th.

[5] It is true, as has been alleged by the defence, this was not an unduly complex case, but nevertheless it was advertised to take at least two days and to include a *Charter* application by the accused to exclude evidence based on the circumstances of his arrest and search. Thus, the case at bar was one which would reasonably take more time to accommodate than what counsel referred to as a garden variety prosecution. It should also be noted that where, much later, the accused added the 11(b) application, the Court was able to deal with that application within four court days of the originally scheduled trial date.

[6] It must also be noted here that there was some unavoidable delay for reasons which have nothing to do with the Court or the Crown: Mr. Asuchak's original counsel withdrew.

[7] There is no suggestion that in the period of time that has elapsed, the accused is now no longer able to marshal his defence or that his own memory has deteriorated so that he is not able to make a full answer and defence.

[8] In *R.* v. *Morin*, [1992] 1 S.C.R. 771, the Court suggested a reasonable timeframe for institutional delay of something in the order of eight months where a simple summary trial is involved. It must be remembered that *Morin's* case was one which took two or three hours, including the 11(b) application. This three-day case got to trial within less time than that. The application is dismissed.

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FAULKNER T.C.J.