

Citation: *R. v. Cornell*, 2006 YKTC 108

Date: 20061103
Docket: T.C. 06-00334
Registry: Whitehorse

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

REGINA

v.

CHRISTOPHER JONATHAN CORNELL

Appearances:
David Mcwhinnie
Fia Jampolsky

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): In this case, Christopher Jonathan Cornell has entered a plea of guilty to a charge of being unlawfully in a dwelling house, contrary to s. 348(1) of the *Criminal Code*. Essentially, what can be proved is that Mr. Cornell, most probably in the company of other persons, entered the dwelling house here in Whitehorse by means of a window which had been forced open. A number of items were taken, including two cameras. As is often the case, the loss felt by the residents of the house extended beyond the value of the items taken because one of the cameras contained some irreplaceable photographs, and of course, understandably, the residents now feel much less secure than they did previously in their home.

[2] Mr. Cornell is, essentially, at this point, a serial offender. He has a horrendous criminal record for a man of 25, and much of it is related to the present circumstances. On the last occasion, he was imprisoned and became involved in this within a week or so of being released from imprisonment. So, essentially, it is business as usual for Mr. Cornell at this point.

[3] At the end of the day, the only option open to the Court is to incarcerate Mr. Cornell, not in the obviously vain hope that it will teach him anything, but simply to provide some period of respite to the public from his activities.

[4] The Crown contends for a period of imprisonment of 12 months. In my view, such a sentence is entirely fit, having regard to what happened here and the antecedents of this offender. He is entitled to credit for the time that he has already spent in custody of some 71 days. It is customary to allow something more than a one to one credit for that time because pre-trial time is not subject to any possibility of parole or early release or anything of that nature. So the time is generally grossed up, so to speak, by a factor of 1.5. Giving credit on that basis results in a period of approximately three and a half months.

[5] The sentence, therefore, of the Court is that he be imprisoned for a period of one year, but allowing three and a half months credit for the time served leaves a remanet of eight and a half months yet to be served.

[6] The surcharge is a \$100 payable forthwith.

[7] The other issue that I need to address is the matter of restitution. Clearly, it would only be fair and just that the victims be compensated for their loss. Unfortunately, the prospects of Mr. Cornell being able to pay for the damage are essentially nil. For that reason, it would be a waste of effort to attempt to extract any compensation from him.

[8] Does that complete the morning's matters?

[9] THE CLERK: Your Honour, do we need to address a firearms order?

[10] THE COURT: That is a good point. Is this an offence that attracts a firearms prohibition?

[11] MR. MCWHINNIE: If I could just have a moment. I do not think so. It does not appear to be any offence in which either there has been a threat of violence or in any way related to this. It is not one that engages 110 or 109, as far as I am aware.

[12] THE COURT: It is interesting, the offence. Madam Clerk shows it as being mandatory, but I tend to agree with Mr. McWhinnie that although the ten-year prong of the test has been met, the other is not.

[13] MS. JAMPOLSKY: Your Honour, by my reading of 109, I am not sure that applies either.

[14] MR. MCWHINNIE: Curious.

[15] THE COURT: It is --

[16] MR. MCWHINNIE: There are certainly some offences that could be committed during the course of, for example, 347, which would trigger 109 and 110, but I do not think they pertain here.

[17] THE COURT: I think in these circumstances it is not mandatory.

FAULKNER C.J.T.C.