

Citation: *R. v. Jules*, 2006 YKTC 104

Date: 20061030
Docket: T.C. 05-00680
06-00219
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

LOREN ANDREW JULES

Appearances:
Michael Cozens
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Jules has pled guilty to one count under s. 267 and one count under s. 266 and one count under s. 145. The Court has been presented with a documented agreed statement of facts surrounding each of these incidents. Briefly, the 267 arose on the 4th of February 2006, in Teslin, where Mr. Jules was attending at a residence where one Anthony Johnston was sleeping on the couch in the living room. Mr. Jules attacked Mr. Johnston and started kicking him in the stomach and in the head. He punched him in the face several times. The result was a broken jaw for Mr. Johnston. Mr. Jules was not intoxicated at the time of this offence.

[2] Later in July, while intoxicated, Mr. Jules got in an altercation with his partner, Ms. Lord. He wanted to go out partying and she did not want to go. The altercation then erupted into hair pulling, shouting, pushing her around. This continued for some time, Ms. Lord was trying to get away. At one point she did get away and returned to their residence, thinking that Mr. Jules may have calmed down. He apparently had become more angry. He then grabbed her by the throat and head-butted her.

[3] He then introduced a rifle into the fray, pointed it several places in the residence, possibly momentarily at Ms. Lord while swinging it around but not directly pointing it at her. He then said he did not care and pointed it at his own head. Finally, he threw the rifle at Ms. Lord, which struck her just above the left eye, cutting her. He grabbed her by the throat one more time. She received a couple of stitches. Several chunks of hair had been pulled from her scalp.

[4] At the time of that occurrence, Mr. Jules was subject to an undertaking with the condition that he abstain, and he clearly was intoxicated at the time of that.

[5] We have a report that shows Mr. Jules certainly readily took full responsibility for his actions; he entered early guilty pleas in each of these instances. He has attended some programming and has maintained contact with Victim Services. One of the most difficult areas for Mr. Jules to get by in regards to sentencing on these matters will be his record. He has three prior serious violence related convictions. He has one prior breach on his record. A victim impact statement has been tendered from both Mr. Johnston and Ms. Lord, indicating the trauma that they have suffered.

[6] Crown is suggesting sentencing in the range of upwards of 16 months to 24 months globally. Defence is not disagreeing with the range, and it has been suggested that although a conditional sentence would not probably be appropriate entirely, that a blended sentence could be considered.

[7] The Court agrees that jail is certainly warranted and will be imposing a jail sentence. Mr. Jules, I do want you to know that for your involvement to date with Victim Services and so on, the Court is going to allow that there be portion of this sentence that can be served in the community; otherwise, you would be certainly looking at straight time. With your prior history, penitentiary time is getting very close. Continued violence of this nature is certainly going to land you some serious jail time in the future.

[8] I propose to deal with it in this manner. For the assault on Ms. Lord, there will be five months to be served at WCC, and for the breach, there will be 30 days to be served consecutive at WCC. That can be followed by a conditional sentence, subject to s. 742.3, of a period of 14 months.

[9] Terms and conditions of that conditional sentence will be as follows. You will be allowed to serve that 14 months in the community under these conditions, you are to:

1. Keep the peace and be of good behaviour.
2. Appear before the Court when required to do so by the Court.
3. Report to a conditional sentence supervisor within two working days of your release and thereafter as often as directed and in the manner directed by the conditional sentence supervisor.

4. Remain within the jurisdiction of the Court unless you have written permission to go outside the jurisdiction of the Court; that you may receive from your supervisor or from the Court.
5. Notify the Court or your supervisor in advance of any change in your name or address and promptly notify the Court or supervisor of any change of employment or occupation.

[10] In addition, these conditions will apply, you are to:

6. Abstain from the possession, consumption or purchase of alcohol and non-prescription drugs except for those drugs prescribed to you by a qualified medical practitioner.
7. Randomly submit to breathalyzer and/or bodily fluids tests upon demand from a peace officer or your conditional sentence supervisor.
8. Not be found in attendance at any premises where the primary purpose is the sale of liquor or alcohol.
9. Abide by a curfew between the hours of 8:00 p.m. and 7:00 a.m. daily. During those hours, you must present yourself in person at the door or on telephone for any curfew checks that are conducted by the RCMP or the conditional sentence supervisor. Any failure to do so will be deemed to be a breach of this conditional sentence order.
10. Attend for assessment, treatment or counselling as directed by your conditional sentence supervisor, specifically in the areas of substance abuse and early childhood trauma and anger management.

11. Use reasonable efforts to seek and maintain employment or educational pursuits and provide proof of your efforts to your conditional sentence supervisor if required.
12. Report as indicated to your conditional sentence supervisor.
13. Have no contact direct or indirect, communicate in any way with Anthony Johnston or Robin Lord except as approved by your conditional sentence supervisor in consultation with Family Violence and Victim Services Unit.

[11] Attached to your s. 266 matter there is going to be a three year probationary term.

The terms of that probation will be as follows, you are to:

1. Keep the peace and be of good behaviour.
2. Report immediately to probation officer and thereafter as often as directed and in the manner directed.
3. Report any change in your name or address, status of education or occupation to your probation officer.
4. Continue to abstain absolutely from the possession, consumption or purchase of alcohol and non-prescription drugs.
5. Not to attend any premises where the primary purpose is the sale of liquor or alcohol.
6. Continue to attend for assessment, treatment or counselling as directed by your probation officer, again specifically in the area of substance abuse and early childhood trauma and anger management.

7. Continue to have no contact direct or indirect with Anthony Johnston or Robin Lord except as may be approved in advance by your probation officer in consultation with Family Violence and Victim Services Unit.

[12] Pursuant to the requirements for the DNA, I am requiring that you submit appropriate samples of your DNA for registration in the DNA bank.

[13] In regards to firearms, I am imposing a further firearms prohibition, ten years from today's date.

[14] The victim fine surcharge will be waived on all counts given the limited means for Mr. Jules at the present time.

[15] Have I missed anything, counsel?

[16] MR. COZENS: Just looking through -- I just want to run through some of the things. I do not believe there was an actual reside approved by your supervisor on the conditional sentence. I am not certain or --

[17] THE COURT: There should have been. Okay, you are right, but I did have it down here.

14. Reside as approved by your conditional sentence supervisor, this is when you are released from WCC to serve your 14 months, and not change that residence without the prior approval, and abide by the rules of that residence.

[18] MR. COZENS: Will that follow over to the probation order as well?

[19] THE COURT: The probation order, no. The reside clause was not intended to be there, and nor was the curfew.

[20] MR. COZENS: Now, with respect to the curfew, perhaps there should be built in, "and except with the prior written permission of the supervisor" on that.

[21] THE COURT: Again, that should have been. I had it written down. So it is, "except with the prior written permission of your conditional sentence supervisor, such permission should be carried on you if you are out during those hours."

[22] MR. COZENS: With respect to the abstention clause, just to flag the issue, my read of the *R. v. Shoker* decision, [2004] B.C.J. No. 2626 (QL), in the Supreme Court is going to make it highly questionable whether we can deal with even sample clauses on conditional sentence orders in the absence of a statutory regime that prescribes how these samples are going to be taken, but that said, I understand that it is not on the probation order, the sample part, correct?

[23] THE COURT: Submit is not on the probation order, nor is abstain on the probation order.

[24] The submit clause, it is the view, certainly of this court, that it is necessary to receive his permission, that is fine, we can ask him if he consents, but it becomes a fairly critical aspect as to whether or not we can agree to a conditional sentence, simply because we know that it is such a risk factor.

[25] MR. COZENS: I am sure the courts will sort that out now in light of the recent Supreme Court of Canada decision. Sorry, I had understood, originally, the abstention and not attend were on the probation order as well, but they are --

[26] THE COURT: I am sorry?

[27] MR. COZENS: I had originally thought that the abstention clause and the not attend were on the probation order. Madam Clerk seems to have some --

[28] THE CLERK: That is what I noted, Your Worship.

[29] THE COURT: Not attend, yes, but the submit was not.

[30] MR. COZENS: Right, but the abstention and not attend carry over?

[31] THE COURT: Right, yes.

[32] MR. COZENS: And with respect to the conditional sentence order, there is just the general programming -- assessment, counselling and programming that is specified. I understood it is your intention not to have alcohol and drug programming, domestic violence or psychological assessments and programming on, they're supposed to be encapsulated in the general programming for the conditional sentence?

[33] THE COURT: That is correct.

[34] MR. COZENS: Now, my suggestion would be that on the probation order, however, that there should be -- the domestic violence clause should be added on the probation order at least. I know that it can be caught in the general purview, but once he is released from custody, certainly he will be in a position to report to the Family Violence

Prevention Unit. I note that that attracts itself to the s. 266 more than the s. 267, but I would suggest that that be added to the probation order.

[35] THE COURT: Mr. Coffin?

[36] MR. COFFIN: I do not have an issue with that.

[37] THE COURT: Okay, the condition will be added that:

8. Attend at the Family Violence Prevention Unit for assessment, programming and counselling as directed.

[38] MR. COZENS: With respect to the no contacts, I am wondering whether on both the conditional sentence and the probation order there should be not attend at the residence of Anthony Johnston or Robin Lord. I do not have addresses but certainly I think that would be appropriate with the same -- I do not have a problem if the prior written permission aspect is added, rather than hiving off Mr. Johnston from Ms. Lord.

[39] THE COURT: Yes. I do not know; it almost, in my view, seems redundant, because the only reason we do not want him to attend there is to make contact with them and he is not to have contact with them. So I think that is sort of overcompensating. So I am content that it not be on there, that the not attend residence not be on there.

[40] MR. COZENS: And the last two, I know there is make reasonable efforts with respect to employment. I am wondering whether there should be a participate in such

education or life skills programming as directed by the supervisor on each? And also a release of information clause, the standard clause?

[41] THE COURT: There should be a release of information in regards to the conditional sentence clause. The conditional sentence had reasonable efforts to seek and maintain employment or educational pursuits and provide proof of your efforts to the conditional sentence supervisor if required. In my view, the purpose that I am trying to accomplish here is to get a lot of things in place over the next 20 months for Mr. Jules, that he will be able to take a bit of control of those positive things for the next three years of probation and continue to pursue them appropriately, with enough monitoring that if he starts to get off the rails, then he can be brought back in. I did not intend for him to, essentially, wind up with those severe restrictions for an entire five years.

[42] MR. COZENS: And I am just catching myself again. With respect to the domestic violence on the probation order, I think I would submit it would probably be appropriate on the conditional sentence order as well, just that one specific one at Family Violence, both conditional sentence and probation, and then that will be it for me.

[43] THE COURT: Well, the conditional sentence is attached to his attack on Mr. Johnston, which is not a domestic violence issue.

[44] MR. COZENS: No --

[45] THE COURT: At least there was no inference it was.

[46] MR. COZENS: No, that is not a domestic violence issue. I mean the conditional sentence attaches to that, but, however, that is going to take place prior to the

probation order kicking in. So there is kind of that gap. He can be directed, under the general clause at that point in time, but given the global effect of the two, it would not be inappropriate, in the Crown's submission, to have it attached to that, so he can start that programming under direction as a separate clause.

[47] THE COURT: No. I think that it can be directed under the general clause and I am going to allow that. I think we may find ourselves running afoul of potential appealable points if we place things on him that are supposed to attach to things other than the charge that he is actually serving. So at this point, I think that it would not be appropriate to put it on that particular aspect. It does not mean that it is not something that can be directed, but it is something that the Court itself has not specifically directed.

[48] MR. COZENS: And the probation period applies to both files; is that correct?

[49] THE COURT: The probation period applies to the s. 266 and the s. 145, yes.

[50] MR. COZENS: Does it apply to the s. 267 as well?

[51] THE COURT: No, no. In fact it will be served, coincidentally, with the 14 months. The intent is that -- that is why it is three years. I would have gone two years beyond, but I went three years, which is the max I can go, and it is to run concurrently with the 14 months.

[52] MR. COZENS: And the DNA and firearms order, however, they attach to the 267(b), do they?

- [53] THE COURT: They attach to the 267.
- [54] MR. COZENS: Thank you. Stay of proceedings on the 86 (sic).
- [55] THE CLERK: Your Worship, was it a mandatory firearms order pursuant to s. 109 or --
- [56] MR. COZENS: That is a 110 order; it is a summary election.
- [57] THE COURT: Yes, that is a 110 order, I believe.

CAMERON J.P.T.C.