

Citation: *R. v. Johnson*, 2020 YKTC 41

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18-00328B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REGINA

v.

WILLIAM GILBERT JOHNSON

Appearances:
Paul Battin
Kelly Labine

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] RUDDY T.C.J. (Oral): William Johnson is before me for sentencing in relation to two counts: one for refusing to provide a breath sample pursuant to a lawful demand; and the other for driving while prohibited. There is an Agreed Statement of Facts that has been filed that indicates that on July 22, 2018, Mr. Johnson was noted to be driving erratically; almost hit a car coming in the other direction; put his car into the ditch; was noted to be extremely intoxicated which led to a breath demand being made; there was some disturbing behaviour during the efforts to take the test; and ultimately, Mr. Johnson refused to provide the sample. He was subject, at that time, to a 10-year driving prohibition.

[2] Mr. Johnson comes before the Court with a related criminal record. He has five prior impaired driving related convictions and an additional conviction in 2012 for impaired driving causing death. He also has three prior convictions for driving while disqualified.

[3] Mr. Johnson is 56 years of age; a member of the Kwanlin Dün First Nation; born and raised in Whitehorse; and has three siblings. It is noted that his father passed away when he was 16. He lost one brother to health related issues connected to a substance abuse problem. He has a good educational and employment history, having both high school and numerous additional programs — including auto body, plumbing, heavy equipment operation, carpentry — that he pursued following his high school education, and he has a good, solid employment history. He is currently employed full-time with the Kwanlin Dün First Nation in the Community Services Department doing housing maintenance. He is a very handy guy and seems to do well when he is active and busy.

[4] The core to Mr. Johnson's issues really centers around the abuse of substances. I have numerous reports before me. I am not going to go through everything that is in them but I have reviewed all of them and considered all of them. They indicate to me that Mr. Johnson's first drink was at the very young age of five or six years of age. There was some experimentation as a young child and teen with various different substances. He was involved in a relationship at the age of 16 that lasted until he was 29. They had three children. It was when that relationship broke down, when he was 29, that he began to drink heavily and it became a significant problem for him.

[5] There is information in relation to Mr. Johnson's last and most serious conviction, that being the impaired driving causing death from 2012. At that time, he minimized his substance abuse issues. Mr. Johnson felt he did not have a problem. He felt he could control it, and he felt he did not need programming and treatment. Mr. Johnson went to jail for a considerable period of time and seemed to have maintained sobriety for some time after his release but, unfortunately, began drinking heavily again sometime before the charges that bring him back before the Court today.

[6] I think the Crown is right about two things: firstly, the significant problem of impaired driving in Canadian society, the risk that impaired drivers present not just to themselves, not just to their passengers, but to other people on the road. Mr. Johnson, you have direct experience of that with what happened to Mr. Dickson. It is something that we view extremely seriously. It is for that reason that the principles of denunciation and deterrence are of primary consideration when we are talking about impaired driving, particularly in situations like your case where there is a related history. However, the other thing that the Crown pointed out that I think is true is that there is a significant difference in your attitude this time around than there was last time. It is clear to me that from the outset you recognized you have a serious problem, that it was not something you could control on your own, and that you needed to reach out for help.

[7] The information I have before me is that Mr. Johnson, on his own initiative and before entering Community Wellness Court ("CWC"), reached out to Mental Wellness and Substance Use Services for intake, and also attended and completed the Jackson Lake Treatment Program. He then entered into CWC in December 2018/January 2019, and has been actively involved in CWC since that time.

[8] As part of CWC, there are a number of things Mr. Johnson has done: firstly, he participated in numerous assessments, including a psychological assessment. All of the assessments make it clear that Mr. Johnson has a severe alcohol use disorder. In addition to the work he had done before entering CWC, he attended and completed the Mental Wellness and Substance Use Services Inpatient Program in April-May 2019. Mr. Johnson then participated in one-to-one counselling and has attended Alcoholics Anonymous throughout.

[9] By and large, Mr. Johnson has performed extremely well in CWC. As I said, he has been a pleasure to have in the program. I do not think we have had many, if any, negative updates/check-ins along the way, and he has participated in testing throughout. It was not until May 18 of this year that an issue arose. Mr. Johnson came to the attention of the police at the Emergency Shelter as a result of a call in relation to a disturbance and he was found to be significantly intoxicated.

[10] I would note that the incident was in the middle of this pandemic we have been trying to deal with and the significant reduction in available services as a result. But I do think, Mr. Johnson, it comes as a reminder and a warning to you that, as successful as you have been over the last year and a half, you have to stay on top of it. You have to stay vigilant and always reminding yourself that this is a problem that does not go away unless you make sure that you have the right supports around you.

[11] The psychiatric assessment tells me that you do very, very well when you are busy. I imagine that part of what happened with the pandemic is that you were not as busy and that is when you are at most risk to start abusing substances. For you, the

trick will always be making sure that you have good, strong backup plans in the event that something happens like happened this year and you are suddenly not as busy as you once were; how do you keep yourself from drifting back into drinking in those circumstances. I think it is a good reminder of the importance of staying connected.

[12] I am very thankful, as I imagine you are and everyone else is, that the slip did not involve you getting behind the wheel of a vehicle. It is not a crime to drink. We deal with people every day who have issues with substance abuse. The crime is drinking and getting behind the wheel of a vehicle because that is when you become a danger.

[13] That being said, everybody fully recognizes that people with long-term addictions like yours struggle at times and that there are slips. The important thing is being honest about the slip and getting back on track as soon as possible. You know what the supports and services are; you know now that you need them; you know how to stay connected; and you know that when you do that, it lets you lead a healthy, sober, productive life, which is something I know you want for yourself, for your children, and for your grandchildren.

[14] I have a joint submission before me. Counsel are suggesting a conditional sentence of 12 months and probation of 12 months. It is really important for you to remember what the Crown said in making his submissions about the sentence he would have otherwise sought because of your history. I can tell you the Court probably would have imposed something in the range of two to three years in jail because of your history. The fact that we are looking at a conditional sentence, which will allow you to serve time in the community, and a probation order, instead of sending you back to the

penitentiary, is because of the work you have done, because you have recognized you have a problem, you needed help, and you reached out for that help. Basically, you have earned your way out of a lengthy jail sentence because of the efforts that you have made in CWC.

[15] In assessing the joint submission, I have considered your Aboriginal heritage, background circumstances, and how they influenced your very early exposure to alcohol. It became a significant problem not just for you but for other family members as well.

[16] I have considered everything before me. Now the question is whether or not I am satisfied what the lawyers are suggesting is an appropriate sentence.

[17] When it is a joint submission, the question is not what sentence I would otherwise impose, but whether what is being suggested would bring the administration of justice into disrepute. So, is it appropriate; is it reasonable?

[18] Based on everything I have seen and heard and the time spent with you over the past year in CWC, I am satisfied, notwithstanding you have a significant related history, that you do not need to go into actual jail because of the work you have done. I am going to adopt the joint submission. I notice with your record that driving while prohibited has also been an issue, so it makes the most sense to me to impose a global sentence of 12 months on each of the charges to be served concurrently but to allow you to serve the sentence conditionally within the community.

[19] One of the things I want you to remember is that a conditional sentence is a jail sentence. Because of your performance in CWC, you get to serve it in the community, but it is not like probation. When you are on probation, your probation officer or case manager has some flexibility in deciding whether to charge when there is a breach. For a conditional sentence, they do not, which means if you breach, you come back into custody and you run the risk of serving the rest of the sentence in jail. You do not want to do that. You want to make sure you follow every single condition, particularly on the conditional sentence order.

[20] The terms for the 12-month conditional sentence order will be that you:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;

[21] Report to — sorry, I know we put "Case Manager" in, but I think I have to say Supervisor because they are statutory conditions. I am going to state for the record that the conditional sentence order will say "Supervisor", but my expectation is that the supervision will be done by the Justice Wellness Centre ("JWC") to maintain continuity. I do not imagine that that will be an issue or a problem for Yukon Community Corrections ("YCC") to do the referral over, but I think I have to say "Supervisor" because it is statutorily mandated. If that raises any kind of problem, please bring the matter back before me. I just want to make sure you still report to JWC and not YCC, so I am going to ask Mr. Campbell to sort that out with YCC. I will use "Case Manager" on the probation order so it is clear because I have more flexibility, but I do not think I do on the conditional sentence order.

3. Report to a Supervisor within two working days, and thereafter, when required by the Supervisor and in the manner directed by the Supervisor;

[22] Just in case that was not clear for you, my expectation is you keep reporting to Mr. Campbell.

4. Remain within the Yukon unless you have written permission from your Supervisor;
5. Notify your Supervisor in advance of any change of name or address and promptly of any change of employment or occupation;
6. Reside as directed by your Supervisor, abide by the rules of the residence and not change that residence without the prior written permission of your Supervisor;
7. For the first six months of this order, at all times, remain inside your residence or on your property except with the prior written permission of your Supervisor or except for the purposes of employment, including travel directly to and directly from your place of employment. You must answer the door or the telephone to ensure you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition;
8. And then for the last six months of this order, you are to abide by a curfew by being inside your residence or on your property between 11:00 p.m. and 7:00 a.m. daily except with the prior written permission of your

Supervisor. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;

9. Not possess or consume alcohol and/or illegal drugs that have not been prescribed for you by a medical doctor. Provide a sample of your breath or urine for the purposes of analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;
10. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge, or nightclub;
11. Attend and actively participate in all assessment and counselling programs as directed by your Supervisor and complete them to the satisfaction of your Supervisor for any issues identified by your Supervisor and provide consents to release information to your Supervisor regarding your participation in any program you have been directed to do pursuant to this condition; and
12. Make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts.

[23] Following the conditional sentence, there will be a probation order of 12 months.

The terms and conditions of that order will be that you:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify your Case Manager in advance of any change of name or address and promptly of any change of employment or occupation;
4. Report to a Case Manager at JWC immediately upon completion of your conditional sentence, and thereafter, when and in the manner directed by the Case Manager;
5. Reside as directed by your Case Manager, abide by the rules of the residence and not change that residence without the prior written permission of your Case Manager;

[24] You will be happy to know that there will be no curfew or house arrest because we are now into probation.

6. Not be outside your residence if you are under the influence of alcohol;
7. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge, or nightclub;
8. Attend and actively participate in all assessment and counselling programs as directed by your Case Manager and complete them to the satisfaction of your Case Manager for any issues identified by your Case Manager and provide consents to release information to your Case

Manager regarding your participation in any program you have been directed to do pursuant to this condition; and

9. Make reasonable efforts to find and maintain suitable employment and provide your Case Manager with all necessary details concerning your efforts.

[25] Both of those orders will be typed up and read to you more slowly than I managed to do here but, really, it is a continuation of what you have been doing in CWC; working with Mr. Campbell to make sure that you are staying on track, that you are reaching out to the supports and services that you need so that you are able to stay clean and sober, and that you do not get behind the wheel of a vehicle. Unfortunately, with your history, driving is a privilege you have lost.

[26] There is going to be a lifetime driving prohibition as part of the joint submission.

[27] I am also required to consider the imposition of victim surcharges, provided you have the means to pay those and, as you are employed, you do have the means. Because of the indictable election, it will be \$200 on each count for a total of \$400. I will give you six months' time to pay.

[DISCUSSIONS]

[28] Make sure that you are taking care of the things that you need to, in terms of your necessities like the roof over your head, food, and so on. You have time to pay so do not feel you have to pay at the expense of putting yourself at risk in other ways.

[29] I think that just leaves the remaining counts.

[30] MR. BATTIN: Your Honour, on any count where there has not been a plea entered, the Crown enters a stay of proceedings. Just so we're clear on the joint information, it's just with respect to those counts to Mr. Johnson and not to Mr. Silverfox.

[31] THE COURT: Thank you.

RUDDY T.C.J.