

Citation: *R. v. Reeves*, 2023 YKTC 7

Date: 20230120
Docket: 20-00671
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Neal

REX

v.

JOHN MICHAEL JOSEPH REEVES

Appearances:
Adam Halliday
Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

RULING ON APPLICATION

[1] NEAL T.C.J. (Oral): Crown and defence submissions have been filed in connection with the defence application for a stay of proceedings, resulting from an alleged breach of the accused's rights under s. 11(b) of the *Charter of Rights and Freedoms* (the "*Charter*"). The remedy is being sought based on an argument that there has been an unreasonable delay, including these proceedings, based on the principles set out in *R. v. Jordan*, 2016 SCC 27.

[2] The initial brief defence application seeking a stay of proceedings was filed on May 25, 2022, with a detailed response from the Crown filed on June 9, 2022. At that time, both counsel agreed to adjourn the application until what they termed as "the resolution of the substantive charges".

[3] Mr. Reeves was convicted of all four counts on July 8, 2022, on the Information before the Court. His sentencing was adjourned in order to permit the preparation of a pre-sentence report at the request of defence. The proceedings were adjourned to October 20, 2022.

[4] On that date, Mr. Reeves did not appear and a bench warrant was approved but held, as counsel indicated that he had been in regular contact with the accused. Sentencing was adjourned again to December 8, 2022.

[5] On December 8, 2022, counsel for Mr. Reeves appeared and raised the issue of the outstanding *Jordan* application. No further materials in support of the defence's *Jordan* application had been filed at that point when the Court convened to consider the sentencing of Mr. Reeves. The Court then ordered fulsome written submissions and evidence supporting the *Jordan* application with return dates of January 6 for the defence, and January 13 for the Crown.

[6] In *Jordan*, of course, the presumptive ceiling for a trial in provincial or territorial court is 18 months. That time limit runs from the date of charges to the completion of sentencing. If a trial concludes above the ceiling of 18 months, the delay is presumed to be unreasonable, therefore infringing s. 11(b) of the *Charter*. In such an event, inquiries are required to determine, among other things, whether or not any of the delay has been waived or caused by the defence.

[7] As noted in the Crown submissions, there has been a cultural shift as a result of the *Jordan* decision which charges all justice system participants, including the defence, to pursue options with economy and to actively advance client's rights within a

reasonable time and collaborate with Crown to use court time efficiently wherever possible.

[8] In this case, the Information before the Court, that alleges four offences against Mr. Reeves, was sworn on December 8, 2020. Therefore, the presumptive *Jordan* ceiling was June 8, 2022.

[9] There are four steps set out in *Jordan* for the analysis of delay arguments:

- The first step is to consider the total elapsed time from the swearing of the Information to the anticipated conclusion of trial;
- The second step is to deduct from that time periods of time or delay implicitly or expressly waived by the defence;
- Thirdly, again there is a deduction to be calculated for any delay caused by defence actions or decisions; and
- Fourthly, the Court must consider the remaining net delay in the context of reasonable times to conclude trial matters.

[10] With respect to step one of the analysis, I find that the total elapsed delay is 25 months and 12 days from December 8, 2020, to January 20, 2023.

[11] With respect to steps two and three of the *Jordan* analysis, there was a delay in resetting a fixed trial date that was implicitly waived by the defence, or at least acquiesced to, on June 8, 2021. At that time, Mr. Campbell had jointly agreed with

Crown to adjourn and increase the time needed for trial. As a result, there was a delay of four months and 23 days that was either implicitly consented to or acquiesced to by defence.

[12] A further defence delay arose as a result of an application without notice brought on April 7, 2022, challenging the authority of an official to designate an officer with certain powers. That application was ultimately abandoned by the defence and resulted in a delay of two months and seven days between April 7 and June 13, 2022. That delay is solely attributable to the consequences of defence actions in bringing an application that was ultimately abandoned when written submissions were sought.

[13] I find that counsel's strategy in advancing this argument as a defence appears to have been inconsistent with the principles of *Jordan*, that counsel moved to actively advance the client's rights within a reasonable time and collaborate with Crown to use court time efficiently. In these circumstances, the defence assumed the burden of any delay associated with their application.

[14] Additional delay resulted on June 13, 2022, for Mr. Reeves' claim of COVID illness requiring the adjournment of his trial at the request of counsel. That arose between June 13 and July 8; 25 days of delay.

[15] The trial was completed on July 8, 2022. Mr. Reeves was convicted of all four counts on the Information. Mr. Reeves then sought a pre-sentence report. Sentencing was adjourned to October 20, 2022. Again, that delay is borne by Mr. Reeves — three months and 12 days of delay.

[16] On October 20, 2022, Mr. Reeves did not appear. A warrant was approved but held until 10:00 a.m. that day. Mr. Reeves did not attend at 10:00 a.m. either. It is noted, of course, that Crown did not appear at 9:00 a.m. as well, which was the reason why the bench warrant was held; however, Crown did speak to the matter at 10:00 a.m.

[17] Mr. Reeves bears responsibility for the delay from October 20, 2022, to the rescheduled sentencing date of December 8, 2022, a total of 46 days.

[18] On December 8, 2022, the date set for sentencing, counsel, on behalf of Mr. Reeves, reinstated his *Jordan* application, again without notice, and again without a detailed written application supported by evidence.

[19] It is clear that the initial application in May 2022 was a placeholder with very little in the way of argument or evidence in support. The January 4, 2023, and January 17, 2023, supplemental submissions provided the detail required to properly consider a *Jordan* application. However, it only arose as a result of the Court's request for substantive submissions from counsel and after the accused had been found guilty of all four counts at trial.

[20] An adjournment from December 8, 2022, to January 20, 2023, when the argument was heard, was required to facilitate the detailed application and reply from Crown. All of these delays are attributable to a defence delay in preparing its *Jordan* application. The delay in that context, between December 8 and January 20, is 43 days.

[21] In summary, the total delay for which the defence bears responsibility is four months and 23 days, two months and seven days, three months and 12 days, 25 days, 46 days, and 43 days — a total delay attributable to defence of 14 months and six days.

[22] On step four of the *Jordan* analysis, I find that the remaining net delay is therefore 11 months and six days resulting from an overall delay of 25 months and 12 days, less the 14 months and six days of delay attributable to the defence. This, of course, is well below the 18-month threshold set out in *Jordan*.

[23] I note, as well, in considering this application that, during the initial discussion of the *Jordan* application with counsel on July 8, 2022, Mr. Drolet indicated that he would be reconsidering the application for *Jordan* relief based on the Court's invitation. Reference was made by the Court in that hearing to delays by Mr. Campbell in setting the matter for trial, which could impact the *Jordan* dates. Having now had the benefit of transcripts from that time period, it is very clear that Mr. Campbell did not present any bar to setting early trial dates. The Court was incorrect in making those assumptions based on a review of the record of proceedings. Mr. Campbell has the Court's apologies for that error.

[24] As noted by the Crown, the initial defence application for judicial stay in May 2022 contains no substantive evidence. That application should have been considered for dismissal as lacking substance pursuant to the decision of *R. v. Cody*, 2017 SCC 31, at para. 38.

[25] The defence, as well, has not actively advanced its arguments within a reasonable time resulting in consequential adjournments and delays. In particular, raising the *Jordan* matter again on the date set for sentencing, December 8, 2022, without evidence or substantive argument did not assist in bringing this matter to a conclusion in a timely manner. There was ample time between the date of conviction in July 2022 and the scheduled sentencing of December 8, 2022, to prepare and file such materials for the Court to consider on that day.

[26] Substantive *Jordan* arguments, only advanced on the date set for sentencing in December, did not occur. There was no notice during the trial or date of conviction that any *Jordan* issue was continuing to be a matter of interest to the defence. Here, what is relevant is *R. v. Rabba*, [1991] 3 O.R. (3d) 238 (C.A.), in the Ontario Court of Appeal.

[27] Defence conduct with respect to advancing and arguing *Jordan* issues amounted to an implicit waiver of the s. 11(b) matters (*R. v. Warring*, 2017 ABCA 128).

[28] In considering other matters associated with the *Jordan* application, the defence has advanced no argument as to any truly extraordinary circumstances justifying a delay in seriously pursuing the *Jordan* issues in this case (*R. v. Bosley* (1992), 59 O.A.C. 161).

[29] Finally, over and above the specific *Jordan* factors, there has been no evidence of prejudice to the accused as a result of the delay that has been established. The burden is, of course, shifted to the defence after the analysis of the net delay, noted in

my earlier portions of this decision, to show that the overall delay is unreasonable even if less than 18 months. Again, no such argument has been advanced, and I find that defence has not proven any unreasonable delay.

[30] Considering all of the foregoing, I find that there has been no excessive delay in this matter, and that there has been no breach of Mr. Reeves' rights under the *Charter* pursuant s. 11(b). The application for a stay of proceedings is denied.

NEAL T.C.J.