COURT OF APPEAL OF YUKON

Citation: *R. v. Amin*,
2025 YKCA 10

Date: 20250826
Docket: 23-YU910

Between:

Rex

Respondent

And

Rudra Pulastyakumar Amin

Appellant

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Before: The Honourable Mr. Justice Groberman
The Honourable Madam Justice Cooper
The Honourable Madam Justice Fenlon

On appeal from: An order of the Supreme Court of Yukon, dated August 8, 2023 (conviction) (*R. v. Amin*, Whitehorse Docket 20-01515D).

Counsel for the Appellant:	J. Budgell
Counsel for the Respondent:	M. Williams
Place and Date of Hearing:	Whitehorse, Yukon May 15, 2024
Place and Date of Judgment:	Whitehorse, Yukon August 26, 2025

Written Reasons by:
The Honourable Mr. Justice Groberman

Concurred in by:
The Honourable Madam Justice Cooper
The Honourable Madam Justice Fenlon

Summary:

The appellant appeals from convictions for sexual assault on the basis of unreasonable delay in bringing the matter to trial. The charges were laid on August 31, 2020, and a first trial ended in a mistrial on October 14, 2022, after improper closing submissions by the Crown. A new trial commenced on July 31, 2023, and the jury delivered its verdict on August 8, 2023, some 35 months and 8 days after the charges were laid. At trial, the appellant contended that his right under s. 11(b) of the Canadian Charter of Rights and Freedoms to a trial within a reasonable time was violated. While acknowledging that the total time between the laying of the charges and the conclusion of the trial exceeded the presumptive ceiling of 30 months, the judge held that exceptional circumstances existed between April and October 2022, such that court facilities could not reasonably have been available for the jury trial. She further attributed a period of delay between the first and second trials to the defence.

Held: Appeal dismissed. The judge made no error in finding that there were exceptional circumstances, or that some delay was attributable to the defence. Her assessment that the relevant delay period was below the presumptive ceiling accorded with her factual findings, which are entitled to deference. The judge made no error in finding that the appellant's s. 11(b) rights were not violated.

Reasons for Judgment of the Honourable Mr. Justice Groberman:

[1] Mr. Amin appeals from his convictions on four counts of sexual assault following a trial before judge and jury in Whitehorse. He contends that he was deprived of his right under s. 11(b) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") to be tried within a reasonable time.

[2] While s. 11(b) of the *Charter* speaks only of a right to be tried "within a reasonable time", the Supreme Court of Canada, in *R. v. Jordan*, 2016 SCC 27, formulated more precise parameters attaching to the right. It stated that for trials in superior courts, there is a "presumptive ceiling" of 30 months' delay between the time charges are laid and the conclusion of the trial. Delay attributable to the defence is excluded from the time calculation, as is delay attributable to "exceptional circumstances". After those deductions are made, a delay in excess of 30 months is a violation of s. 11(b) and requires that the proceedings be stayed. Where the delay is less than the presumptive ceiling, it remains open for the defence to demonstrate the delay was, nonetheless, unreasonable.

[3] The circumstances of this case are unusual in two respects. First, the appellant's initial trial was delayed from April 2022 to October 2022 because priority was given to a first-degree murder trial in Whitehorse that did not proceed as anticipated. Second, the appellant's initial trial ended in a mistrial after inappropriate statements were made by the Crown in its closing submissions to the jury.

[4] The charges against the appellant were laid on August 31, 2020. His ultimate trial took place from July 31 to August 8, 2023. The elapsed time between the laying of charges and the conclusion of the trial was 35 months and 8 days. The appellant brought an application for a stay of proceedings on the basis that the delay violated his rights under s. 11(b). The Chief Justice of the Supreme Court of Yukon, who was to preside at the upcoming trial, heard the appellant's application to stay proceedings under s. 11(b) of the *Charter*. She dismissed the application.

[5] The judge found that some 32 days of delay were attributable to the defence. She further attributed a period of 161 days of delay to exceptional circumstances. Those circumstances were the unexpected need to reschedule the first-degree murder trial and the impracticality of running more than a single jury trial at once in a jurisdiction as small as Yukon. In the result, she held that the relevant period of delay was below the 30-month presumptive ceiling. She rejected the appellant's contention that his rights under s. 11(b) were violated.

Factual Background

[6] The appellant was charged with sexual assault against three complainants. The appellant was initially arrested on July 24, 2020, and released. The charges against him were sworn on August 31, 2020. He remained on bail to the date of trial.

[7] The appellant's first appearance in the Territorial Court was on September 9, 2020. There were several subsequent appearances (primarily concerned with disclosure issues) before the appellant elected trial by jury on February 17, 2021.

[8] The appellant's first appearance in the Supreme Court of Yukon was on March 9, 2021. On March 23, 2021, dates for pre-trial applications and for the trial were confirmed. The trial was anticipated to occur between April 25 and 29, 2022, some 20 months after the laying of the charges.

[9] A first-degree murder trial (*R. v. Silverfox*) was scheduled to take place before the appellant's trial. It was to run for five weeks from January 10, 2022, and to conclude prior to the commencement of the appellant's trial. Unfortunately, approximately one month before the scheduled commencement of that trial, defence counsel advised that unanticipated applications needed to be heard before the trial. The commencement of the *Silverfox* trial was delayed until March 28, 2022, and the trial was not anticipated to conclude in time for the appellant's trial to proceed.

[10] One of the defence counsel in *Silverfox* was the appellant's counsel. She indicated a willingness to seek out new counsel for the appellant in the event this would allow his trial to proceed as scheduled. The court, however, advised that it

would not be possible to hold the two trials at the same time, as the resources available in Yukon are insufficient to allow two jury trials to proceed simultaneously.

[11] It was acknowledged that the *Silverfox* matter had to be given priority. The charges were older, and, in contrast to the situation with the appellant, the two co-accused in *Silverfox* were both in custody pending trial. Further, it was anticipated that, even with a delay to accommodate the *Silverfox* trial, the appellant's case could be heard within the time limits set out in *Jordan*. As other jury trials were booked in the spring of 2022, the trial coordinator offered the dates in the fall of 2022. The appellant's trial was rescheduled to October 3–7, 2022. The trial proceeded at that time, but took longer than anticipated as a result of a new defence application.

[12] The Crown's closing submissions were heard on October 13, 2022. The Crown made a number of improper observations to the jury, and, in reasons pronounced the following day, the judge declared a mistrial (*R. v. Amin*, 2022 YKSC 51).

[13] Following the mistrial, efforts were made to schedule a new trial expeditiously. On November 2, 2022, the trial coordinator offered several potential trial dates between late November and mid-February 2023. Defence counsel indicated that she could not accommodate any of the proposed dates. The Crown did not indicate whether or not it was available.

[14] The court then offered further trial dates: April 24–28, 2023; May 8–12, 2023; and September 25–29, 2023. Defence counsel was unavailable for the April and May dates, but available for the September dates. This time, the Crown indicated its availability, which included all of the dates provided by the court.

[15] Defence counsel requested dates in March, June, or July of 2023, all of which the court was unable to accommodate. Although jury trials are generally not scheduled in Yukon in the summer, the Chief Justice directed that the court would hear the trial from July 31 to August 8, 2023.

[16] The appellant filed an application seeking a stay of proceedings based on an alleged violation of his rights under s. 11(b) of the *Charter*. On May 26, 2023, the Chief Justice issued her reasons dismissing the application.

The Reasons in the Court Below

[17] The judge considered that no delay in the proceedings was attributable to the appellant prior to the declaration of the mistrial. The Crown conceded, and the judge accepted, that the mistrial itself was caused solely by inappropriate Crown conduct. The judge considered, however, that such conduct did not mean that all delay from the date of the mistrial until the conclusion of the second trial was to be attributed to the Crown. She stated, at para. 41 of her reasons, that "[w]ith the [appellant] still charged with an offence until his second trial [was] completed, it was incumbent on all participants to act consistently with an expeditious proceeding, including the [appellant]."

[18] The judge did not attribute delay to the defence for the period from November 2022 to February 2023. While defence counsel was unavailable and therefore unwilling to accept the trial dates offered by the court, the judge declined to infer that the Crown was prepared to appear on those dates. The Crown had not responded to the trial coordinator's emails setting out the proposed trial dates.

[19] The judge did, however, note that defence counsel had also indicated that she could not accommodate the dates proposed by the court in April and May 2023. The Crown had indicated that it was available for trial on those dates.

[20] The judge discussed the logistical difficulties that ordinarily preclude the holding of jury trials in Yukon during the summer, and highlighted the scheduling efforts made in this case:

> [45] In this case, the Court has made an exception to the usual practice of not holding jury trials in the summer months (understood as mid-June to mid-August). This practice is due to an absence of court resources because of summer holidays - in a small northern jurisdiction where numbers of staff are limited and summers are short, accommodations for holidays for court staff are made in order to preserve mental health and employee retention. As well, there are challenges in obtaining sufficient jurors over the summer months in

> the Yukon. The Yukon is not the same as Nunavut, (see *R v Anugaa*, 2018 NUCJ 2) where the majority of the population are Nunavummiut and are on the land for most of the summer months, resulting in no scheduling of jury trials during that time. However, many Yukoners, including First Nations people who comprise approximately 22% of the population, are away from Whitehorse during the summer months. In addition, the offence of sexual assault traditionally has created challenges in the selection of suitable jurors due to personal experiences potentially affecting their impartiality.
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> [46] Despite these potential barriers and concerns, the importance of holding the second trial as soon as possible in this case led the Court to make an exception to its regular practice and provide trial dates in the summer.

[21] The judge's rationale for attributing 32 days delay to the defence was as follows:

> [47] The inability of the Court to provide earlier dates in June or July, when both counsel said they were available (Crown June 6-30 and July 10-31 and defence available those same dates) means defence should not bear the responsibility of the delay until July 31, 2023. Further, the Crown was not available the last week of May.
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> [48] As a result, the delay from April 24, 2023 to May 26, 2023 shall be attributable to the applicant. This amounts to one month and 2 days, or 32 days - to be subtracted from the total delay as defence delay.

[22] The judge then turned to the question of how to deal with the delay in the first trial date, from April 2022 to October 2022, that was caused by the unanticipated rescheduling of the *Silverfox* trial. The appellant argued that the delay did not meet the criteria for an "exceptional circumstance", but was, rather, an example of chronic institutional delay caused by an absence of judicial resources, citing *R. v. Villanti*, 2020 ONCA 755.

[23] The judge rejected that argument. She considered that the rescheduling of the *Silverfox* matter was exceptional and unanticipated. More importantly, she accepted that the Supreme Court of Yukon's lack of capacity to hold two jury trials simultaneously was reasonable, and not an example of chronic institutional delay:

> [51] … Defence counsel's argument that a jurisdiction the size of the Yukon [which the judge indicated had a population of approximately 44,000] should have the capability of holding two jury trials at once is unreasonable. First, there are good reasons why it is difficult for the Supreme Court of Yukon to hold two jury trials simultaneously: i) an insufficient number of

> sheriffs, especially if the jury is sequestered and require a guard 24/7; ii) the existence of only one courtroom to accommodate a jury and one jury room for retiring and deliberation; iii) the challenges in holding one jury trial on site and another off site at the same time, including locating an appropriate site at the appropriate time, and the additional resources - human, administrative, and financial - required for an off-site trial. Second, the need to hold two jury trials simultaneously does not exist in Whitehorse. While it is true that the number of jury trials has increased over the last several years, the Court has been able to schedule jury trials within the *Jordan* timelines even with the limitation of conducting one at a time. The required additional costs of renovations to the courthouse or of conducting off-site trials, and of increased human resources is not justified.
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> ….
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> [52] … The inability of the Court to hold two jury trials simultaneously was not a chronic institutional delay problem comparable to a shortage of judges. It is neither reasonable nor necessary for a centre the size of Whitehorse to have the capability at any given time to conduct two jury trials at once. The new date of October 3, 2022 provided for the applicant's trial was still well within the *Jordan* presumptive ceiling. The need to adjourn was a discrete event, an exceptional circumstance. The time between April 25 and October 3, 2022 of 5 months and 8 days or 161 days shall be subtracted from the total delay.

[24] Having found that defence delays and exceptional circumstances reduced the relevant delay to a period below the presumptive ceiling set by *Jordan*, the judge proceeded to consider whether the delay was, nonetheless, unreasonable. She found that it was not.

Arguments on Appeal

[25] The arguments on appeal largely mirror those made before the trial judge. The appellant argues that the judge erred in four respects in finding that the appellant's s. 11(b) rights were not infringed:

a) In holding that the appellant was responsible for a delay of 32 days;

b) In finding that the initial adjournment of the appellant's trial constituted a "discrete event" that was capable of constituting (and did constitute) an "exceptional circumstance";

c) In finding that the exceptional circumstance was responsible for a delay extending to 161 days;

d) In failing to find the delay to have been unreasonable, even if she was correct in calculating it not to have exceeded the presumptive ceiling for delay.

The Attribution of 32 Days to Defence Delay

[26] The 32 days of delay attributed by the judge to the defence is a fairly small portion of the total delay. Assuming the trial judge was correct in attributing a delay of 161 days to exceptional circumstances, the delay attributed to the defence is of limited consequence. A 161-day deduction from the delay period would be sufficient, standing alone, to bring it below the presumptive ceiling set in *Jordan*. Nonetheless, particularly because the ceiling set in *Jordan* is merely "presumptive", and delays that are below the threshold may nonetheless amount to violations of s. 11(b), it is important to acknowledge and address the appellant's arguments on this issue.

[27] First, the appellant makes the point that in the absence of inappropriate Crown conduct in the form of an inflammatory address to the jury, the trial would have been concluded in October 2022. The appellant contends that any delay after October 2022 should, therefore, be attributed to the Crown.

[28] While there is a superficial attractiveness to this argument, it cannot prevail. As the trial judge indicated, there is a continuing obligation on all participants in a criminal trial to avoid delay. The fact that one party has caused a delay does not absolve other parties from their responsibilities to avoid further delay.

[29] The appellant suggests that the Crown's conduct at the first trial "demonstrated a complete disregard for the Appellant's *Charter* right to be tried within a reasonable time and ignored the Crown's responsibility to make all efforts to conclude trials under the presumptive ceiling". It does not appear to me that this description is a fair assessment of the Crown's misconduct.

[30] The observations made by the Crown in its closing to the jury were, undoubtedly, improper. They indicated a lack of familiarity with the limits of closing argument, and poor judgment on the part of Crown counsel. The comments,

however, were not aimed at delaying the proceedings, nor were they made in disregard of the appellant's right to be tried within a reasonable time. While such a deliberate sabotaging of the initial trial might well result in a stay of proceedings notwithstanding that the *Jordan* threshold had not been exceeded, the Crown actions in this case were not of that nature. The Crown must bear responsibility for the delays flowing from its breach of protocol, but it is not precluded from pointing to subsequent actions by the defence that contributed to delay.

[31] The appellant also argues that the trial judge erred in attributing 32 days delay to the defence, suggesting that the unavailability of defence counsel during the periods offered by the court should be treated as only amounting to 10 days—the actual trial days offered by the court that defence counsel rejected (April 24–28 and May 8–12). His counsel notes that in *Jordan*, at para. 64, the Court stated that "periods of time during which the court and the Crown are unavailable will not constitute defence delay, even if defence counsel is also unavailable." She also cites *R. v. Hanan*, 2023 SCC 12, in which the Court rejected the idea that where counsel rejects a court date, the delay is measured to the next date that the court offers.

[32] In my view, the minute accounting of time proposed by the appellant is unrealistic. Where a court provides a range of trial dates reasonably close together, and defence counsel rejects them and asks for later dates, the court is entitled to treat the period that was rejected as defence delay. I do not accept the suggestion that the court must deduct weekend days from the total delay (on the basis that the court does not ordinarily sit on weekends), or that the court is to assume that defense counsel was available at every moment between the rejected dates. Put another way, the judge was entitled to use her common sense and knowledge of the court system in assessing the delay caused by counsel's lack of availability. In my view, she was appropriately conservative in finding that the proven defence delay amounted to only 32 days. That period, from a realistic standpoint, is the period which defence counsel indicated that she was unavailable.

[33] Accordingly, I am not persuaded that the judge erred in attributing 32 days to defence delay.

The Adjournment Necessitated by the Rescheduling of *Silverfox*

[34] In *Jordan*, the Court set out key features of “exceptional circumstances”. At para. 69, it indicated that such circumstances must be “reasonably unforeseen or reasonably unavoidable” and that delays emanating from the circumstances could not have been reasonably remedied by Crown counsel once they arose.

[35] Critically, the Court recognized that the question of whether circumstances are exceptional is one that needs to be entrusted to the trial judge:

> [71] It is obviously impossible to identify in advance all circumstances that may qualify as “exceptional” for the purposes of adjudicating a s. 11(b) application. Ultimately, the determination of whether circumstances are "exceptional" will depend on the trial judge's good sense and experience. The list is not closed. However, in general, exceptional circumstances fall under two categories: discrete events and particularly complex cases.
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> [72] Commencing with the former, by way of illustration, it is to be expected that medical or family emergencies (whether on the part of the accused, important witnesses, counsel or the trial judge) would generally qualify. Cases with an international dimension, such as cases requiring the extradition of an accused from a foreign jurisdiction, may also meet the definition.
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> [73] Discrete, exceptional events that arise at trial may also qualify and require some elaboration. Trials are not well-oiled machines. Unforeseeable or unavoidable developments can cause cases to quickly go awry, leading to delay. For example, a complainant might unexpectedly recant while testifying, requiring the Crown to change its case. In addition, if the trial goes longer than reasonably expected -- even where the parties have made a good faith effort to establish realistic time estimates -- then it is likely the delay was unavoidable and may therefore amount to an exceptional circumstance.
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> [74] Trial judges should be alive to the practical realities of trials, especially when the trial was scheduled to conclude below the ceiling but, in the end, exceeded it. In such cases, the focus should be on whether the Crown made reasonable efforts to respond and to conclude the trial under the ceiling.

[36] The cases relied upon by the parties serve to underline the points made in *Jordan*. Chronic delays caused by a lack of resources will not constitute “exceptional circumstances” (*Villanti*); on the other hand, genuinely unexpected events that result,

inevitably, in delay, may constitute “exceptional circumstances” even where they result in an absence of resources (*R. v. Belzil*, 2021 ONSC 781).

[37] The appellant contends that the *Silverfox* adjournment is simply a manifestation of a justice system that is not properly resourced to allow for multiple jury trials to take place at the same time. As such, it is symptomatic of chronic systemic delay, and not a discrete event of an exceptional nature.

[38] It is clear that the *Jordan* framework was put in place to prevent undue delays caused by an under-resourced justice system. As a general matter, the absence of adequate resources will not be an excuse for delay; rather, it will be a culpable circumstance justifying attribution of the delay to the state.

[39] *Charter* rights are designed to protect the interests of individuals, and a lack of resources will generally not be an adequate explanation for the infringement of an individual’s rights. I agree with the appellant’s contention that some of what was said by the trial judge simply underlined the lack of resources available in Whitehorse—the lack of sufficient infrastructure to accommodate two jury trials, the limited number of sheriffs, and the difficulty of holding off-site trials, for example. In terms of the *Jordan* framework, the judge’s observations about the absence of resources, by themselves, do not take us very far.

[40] On the other hand, the judge’s discussion of the small population in Yukon, and her observations respecting demand for jury trials are of importance. It must be remembered that the *Jordan* framework was formulated for the purpose of combatting a culture of complacency and chronic delays in the justice system. Where such problems are endemic, they cannot excuse delay. Where, however, a system is resourced in a manner that covers all anticipated difficulties, problems cannot be attributed to under-resourcing.

[41] The judge in this case, as Chief Justice of the Supreme Court of Yukon, was well aware of the resources available in the Territory, and of the demand for jury trials. She specifically found that the resources available are normally adequate, and

that given the small population of the territory and the rarity of problems in keeping within the *Jordan* ceiling, the situation giving rise to the delay in this case was not a result of inadequate resources being devoted to the judicial system. She found that the unexpected situation surrounding the scheduling conflict with *Silverfox* amounted to an exceptional circumstance. I am not convinced that the appellant has shown that the judge erred in her approach.

[42] I note, as well, that the exceptional circumstance that presented itself would not, standing alone, have resulted in the delay exceeding the presumptive ceiling in *Jordan*. The Crown had aimed to have the trial concluded well before the ceiling was reached, and was able to schedule a new trial in what ought to have been plenty of time to meet the requirements.

[43] In my view, the trial judge applied the law correctly and concluded that the *Silverfox* rescheduling was both unforeseeable and adequately handled by the Crown. She clearly found that the system was not under-resourced and concluded that it was designed to handle cases within a reasonable time. She did not err in finding the *Silverfox* rescheduling to be an exceptional circumstance.

Did the Judge Err in Attributing a 161-day Delay to the *Silverfox* Rescheduling?

[44] The trial judge found that the delay occasioned by the *Silverfox* rescheduling amounted to 161 days. The assessment of the length of the delay caused by the rescheduling is, on the face of it, a question of fact. It is not for this Court to second-guess the trial judge's assessment of evidence absent a clear error in her approach or a palpable and over-riding error.

[45] In this case, it was clear that the judge understood the nature of the delay and concluded that attributing 161 days to it was reasonable. I am unable to find any error in her approach.

[46] The evidence does not disclose any lack of diligence on the part of the Crown or the court in attempting to find new trial dates. Particularly given that the delay was not, at the time of rescheduling, approaching the *Jordan* ceiling, it cannot be said that the delay to the new trial date was an unreasonable one.

[47] I am unable to find any reversible error in the judge's conclusion that a delay of 161 days was attributable to the exceptional circumstances that the court faced.

If the Delay was Below the *Jordan* Ceiling, was it Unreasonable?

[48] As the Supreme Court of Canada recognized in *Jordan*, s. 11(b) of the *Charter* does not specify a minimum delay that will be unreasonable. It is possible for a delay of less than 30 months to be unreasonable for a superior court criminal trial in some circumstances.

[49] The trial judge addressed the appellant's argument on this ground, accurately summarizing the law and rejecting the argument that the delay was unreasonable. She noted that in order to succeed on this argument, the defence was required to demonstrate: (i) that it took meaningful steps to demonstrate a sustained effort to expedite proceedings; and (ii) the case took markedly longer that it reasonably should have.

[50] The judge noted that cases in which a delay beneath the *Jordan* threshold is found to be unreasonable are rare. Although she accepted that defence counsel made some efforts to expedite proceedings, she found that there was no sustained effort on counsel's part to do so.

[51] The judge held that while the case took longer than would reasonably have been expected absent the special circumstances of the *Silverfox* rescheduling and the mistrial, those events explained the delays adequately and took the case outside of the rare cases where delays beneath the *Jordan* presumptive ceiling result in stays of proceedings.

Conclusion

[52] I am not convinced that the judge made any reversible error in her application of the law as set out in *Jordan* and subsequent cases. In particular, she fully understood and addressed the law relating to “exceptional circumstances”. Further, her findings of fact and assessments of the length of delay were founded in the evidence. She did not make any errors of principle, nor did she misapprehend the evidence.

[53] I would dismiss the appeal.

“The Honourable Mr. Justice Groberman”

I AGREE:

“The Honourable Madam Justice Cooper”

I AGREE:

“The Honourable Madam Justice Fenlon”