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Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Cozens

REGINA

v.

KIMBERLY ANN BRIEMON

Appearances:  
Ludovic Gouaillier  
Robert Dick

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR JUDGMENT**

[1] COZENS T.C.J. (Oral): Kimberly Briemon has entered a guilty plea to several offences.

[2] During the time frame between April 12, 2006 and April 15, 2006, Ms. Briemon, who was involved in a relationship with Blair Briemon at the time and was using cocaine, broke into the residence situated at 15 Bates Crescent, the residence of David Gould and Linda Briemon. Initially, they broke in in order to get some shelter and ended up returning on three different occasions to steal and sell items. These included a black leather coat, a Sony DVD player, a Marlin rifle, and some personal cheques were taken

at the time. Subsequently, in this time frame, Ms. Briemon forged these cheques and had them payable to herself in the amounts of \$800 each on two occasions, for a total of \$1,600. The only item returned was the Marlin rifle. Her guilty plea today in respect to those circumstances is to a s. 348(1)(b) charge and a s. 368(1)(a) charge.

[3] As well, during this time frame, there was a pickup truck associated with the residence that belonged to David Gould and this pickup truck was taken without permission by Mr. Briemon and Kim Briemon as well. I point out that Mr. Gould and Linda Briemon are the parents of Blair Briemon, as I understand it. That resulted in a guilty plea to a s. 344(a) charge.

[4] There is a subsequent guilty plea to two further charges. She failed to attend court on October 18, 2006, as she was required to do, which resulted in a s. 145(2) charge and conviction; and, having left the jurisdiction about that point in time, she also failed to report to her Probation Officer or Bail Supervisor between the 20th of October and the 2nd of November, 2006, contrary to the terms of her recognizance, thus resulting in a conviction under s. 145(3).

[5] There is a joint submission before the Court. Ms. Briemon has pre-trial custody since she turned herself in on April 6, 2010, which is close to two months. Is it the Crown's position that that two months can be credited at one and a half to one as the offences arose before the amendment dates?

[6] MR. GOUAILLIER: Yes, that's right. Sorry, that's something that didn't strike me, but yes.

[7] THE COURT: I just wanted to make that clear. So the joint submission is that, with respect to the two breach charges, that the approximately three months pre-trial custody be attributed towards that and I will do so by assigning one and a half months to each, consecutive to each other, which makes up the total of three months of pre-trial custody. So that is with respect to the s. 145 --

[8] MR. GOUAILLIER: Yes, Your Honour, I should actually point out that in my discussions, we have not considered the fact that it could be time and a half. So the intention was to ascribe two months to it.

[9] THE COURT: Oh, then it will be two months if that was the discussion beforehand.

[10] MR. DICK: That's correct, yeah.

[11] THE COURT: It will be one month on each--

[12] MR. DICK: We're not seeking time and a half.

[13] THE COURT: -- consecutive to each other, time served, for total of the two months. Okay. Then the submission is that with respect to the s. 348(1)(b) and the s. 334(a) offences that there be a three month conditional sentence. The terms suggested are as those set out in a pre-sentence report and that that be followed by a 30 day conditional sentence order on the s. 368(1)(a) offence.

[14] There is a comprehensive pre-sentence report before the Court. The report, and I am not going to go through it, in a nutshell, basically, says that Ms. Briemon has a lot of positive factors in her life and the one really negative factor is her addiction to cocaine, and the resultant effects which have cost her a lot. It cost her time with her

children and a lot of stress over the last few years, I would suspect. To her credit, Ms. Briemon came back to the jurisdiction, surrendered herself into custody on April 6th and wants to put this part of her life behind her.

[15] The sentence that was given to Mr. Briemon, who pled to similar and some different offences arising out of the same set of circumstances, is virtually the same sentence. He did have a prior related record. Ms. Briemon had no criminal record prior to these offences taking place and only a very minor one incurred since then. In all likelihood, related again, to the struggles she has with cocaine.

[16] There is also a suggestion that there be six months probation and that there be restitution in the amount of \$1,600 payable to Ms. Briemon, I think it was, Linda Briemon, or was it to both?

[17] MR. DICK: Yes, just a clarification. In the probation order, I understand that the curfew term will not be applied?

[18] THE COURT: Just further on that, this is a conditional sentence, where the Crown is not seeking the house arrest condition but only the curfew condition as set out; is that correct?

[19] MR. GOUAILLIER: Yes, I mean --

[20] THE COURT: That was the discussion between counsel?

[21] MR. GOUAILLIER: Well, we had broached I had thought, but yes, essentially, that's what's recommended and I don't think that this is a case that necessarily warrants a full house arrest.

[22] THE COURT: I have a joint submission before me and that is what --

[23] MR. DICK: Perhaps the restitution could be put in a probation order.

[24] THE COURT: Rather than the conditional sentence order?

[25] MR. DICK: Yes, because it would give her more time to get the money together.

[26] THE COURT: Actually, it gives her more time if I put it in both. Well, it gives her the same amount of time if I put it in both. But she can make such efforts as she wants. I mean, it is enough if it is in the probation order, and if she can make payments before that, great.

[27] MR. DICK: Yes, her intention is to make payments beforehand but --

[28] THE COURT: Right.

[29] MR. DICK: -- if it's in a probation order, it's fair.

[30] THE COURT: There is a lot of support for Ms. Briemon in the Court and outside of the Court, as far as I know, and I am satisfied that it is appropriate and the sentence will be as indicated, the one month time served consecutive to each other on the two breach charges, and a three month conditional sentence. The terms will be:

1. To 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 Supervisor immediately upon your release from custody and thereafter, when required by the Supervisor and in the manner directed by the Supervisor;

4. Remain within the Yukon Territory, unless you have written permission from your Supervisor or the Court; and notify the Supervisor or the Court in advance of any change of name or address and promptly notify the Court or Supervisor of any change of employment or occupation;
5. Reside as approved by your Supervisor and not change that residence without the prior written approval of your Supervisor;
6. Abide by a curfew by remaining within your place of residence between the hours of 10:00 p.m. and 7:00 a.m. daily, except with the prior written permission of your Supervisor;
7. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;
8. Abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;

[31] As I understood, the joint submission was for the terms as set out in the report. That includes the sample clause. So, I assume you have discussed that with your client and she is prepared to do that?

[32] Noting then, the consent of Ms. Briemon to the imposition of this further portion of that clause, it will include:

9. Provide a sample of your breath and 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. Have no contact directly or indirectly or communication in any way with any known drug users and not attend at or within any known drug houses.

[33] Is there a way to make that clause a little tighter: "as identified to you by your Supervisor." And is it known current drug users, I assume?

[34] MR. DICK: Well, known to whom?

[35] THE COURT: Okay. So that is what I am going to say,

As identified to you in writing by your Supervisor.

So it might be really good in your discussions with the Supervisor if you can provide a list of people that might work there. I mean, you want to stay away from any of this involvement too, but I am not going to get into that one anymore.

[36] MR. GOUAILLIER: Sometimes, the -- the intent of these conditions is if Ms. Briemon finds herself somewhere where drugs are being consumed, the intent is to have her leave the premises when she becomes aware of it. But if the Court wants to have a more direct approach to the condition, I mean that's fine. I know it's been found to be problematic in the past.

[37] THE COURT: Well, I am going to add another clause. I am going to leave it the way that I changed it and I am going to add another clause that says --

[38] MR. DICK: Such users and houses as identified by your Supervisor.

[39] THE COURT: I have that. You know what I am thinking of, and it is also to give Ms. Briemon a tool, "not to be in the presence of any individuals who are in

the possession of or consuming illegal drugs.” So if you are at a place and someone pulls out a joint or something, you are gone, you cannot be there, and it also gives you a tool to say, “Look, we got to go,” if you are with a friend and you can leave. So I am going to add that clause in there, just besides the other one.

11. Have no contact directly or indirectly or communicate in any way with Blair Briemon without the prior written consent of your Supervisor.

[40] That may be more difficult but I think that really that’s what you are looking at right now. I mean you are going to be here for a bit unless they transfer the conditional sentence down there. I am not going to probe into whether he is using or not right now, but there is no question that sometimes your contact with him, face-to-face contact, has resulted in a bit of a problem when it comes to your use of cocaine. So they will sort out when it is going to be permissible, and likely, phone contact is not going to be a huge problem while you are here and he is there.

[41] Having given the Court your consent:

- Take such alcohol and or drug assessment, counselling or programming as directed by your Supervisor.

[42] The consent clause, I would assume, you know, I am going to change it to what it says in the conditional sentence order.

12. Take such alcohol and drug assessment, counselling or programming as directed by the Supervisor --

[43] Again, these have been discussed, your client is willing to attend at treatment, at a residential treatment program if directed to do so?

[44] MR. DICK: If directed.

[45] THE COURT: Having given your consent:

12. -- and having given your consent, attend and complete a residential treatment program as directed by your Supervisor;
13. Make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;
14. Provide your Supervisor with consents to release information with regard to your participation in any programming, counselling or employment that you have been directed to do pursuant to this conditional sentence order.

[46] Those are all the terms that were sought in the conditional sentence order?

[47] MR. GOUAILLIER: Yes, and having thought about it, perhaps it's better to leave the -- either leave the restitution provision for the probation order or split them so there's no -- because if it's included in both, unless you can place it within the time of the conditional sentence, it's going to be a breach, so.

[48] THE COURT: Which, of course, the breach would not arise until the conditional sentence was over. So there is no remedy under the conditional sentence, in any event.

[49] MR. GOUAILLIER: That's right.

[50] THE COURT: I think it makes more sense just to include that in the probation order and that is what I am going to do.

[51] MR. DICK: Particularly, if it turns out that the Conditional Sentence Supervisor says you should go to treatment and do this and do that, and employment's an issue.

[52] THE COURT: No, I would not put anything in that would require anything to be completed before the end of the conditional sentence order. Ms. Briemon knows what she needs to do by the end of the probation order and she will deal with it accordingly.

[53] The probation order to follow will be six months. The statutory terms, of course, are different.

1. Keep the peace and be of good behaviour.
2. Appear before the Court when required to do so by the Court;
3. Notify the Court or Probation Officer in advance of any change of name or address and promptly notify the Court or Probation Officer of any change of employment or occupation;
4. Remain within the Yukon Territory unless you have obtained written permission from your Probation Officer or the Court;
5. Report to a Probation Officer immediately upon completion of your conditional sentence --

And when I say that, that means both conditional sentences, all right?

-- and thereafter when and in the manner directed by the Probation Officer.

[54] The reside clause will be the same as the conditional sentence order. There will be no curfew clause. The abstain clause will remain the same.

[55] Any comments on whether the sampling clause should be included on the probation order as well? I understand the consent for the conditional sentence order. Does the consent extend to the probation order as well?

[56] MR. DICK: I think if she's gotten through the conditional sentence order, the probation order should be watered down slightly and that could be taken out.

[57] THE COURT: The law is going to be changed, I expect, in the future, with regard to those clauses. Currently, I am satisfied that it will not be on the probation order. There will be an abstain clause, absolutely, but not the sampling clause. It is a different societal interest and in both cases, consent is required, in any event.

[58] There will be the same alcohol, drug and programming clause.

[59] There will be the same no contact clauses with all named and unnamed individuals. There are three clauses, right, including Mr. Briemon on one of the clauses.

[60] There will be the same clause with respect to employment and the same clause with respect to release of information. There will also be the clause that requires her to pay restitution in the amount of \$1,600 to David Gould and Linda Briemon. Anything further on the probation order?

[61] MR. DICK: No.

[62] THE COURT: The remaining charges are stayed, I assume?

[63] MR. GOUAILLIER: They are.

[64] THE COURT: I am going to waive the victim fine surcharges in all of this.

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COZENS T.C.J.