Citation: *R.* v. *Cornell*, 2007 YKTC 41

Date: 20070518
Docket: T.C. 07-00014
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Faulkner

REGINA

v.

CHRISTOPHER JONATHAN CORNELL

Appearances:

Michael Cozens	Counsel for the Crown
Gordon Coffin	Counsel for the Defendant

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): Christopher Jonathan Cornell has entered pleas of guilty to a charge of attempted armed robbery, contrary to section 344 of the *Criminal Code*, and with being masked with intent to commit an indictable offence, contrary to section 351(2) of the *Code*.

[2] The facts are that on April 10, 2007 at approximately 9:45 p.m. Christopher Cornell entered the Bernie's Race Trac gas station at the corner of Hamilton Boulevard and McIntyre Road in Whitehorse. He was wearing black clothes, black gloves, a black hoodie, and had his mouth covered with a bandana. He was carrying a cheap looking black-handled knife with a two-inch blade in one hand, and a can of bear spray in the

other. He confronted the store clerk, Jason Kormos, and said to him, "You know what to do. Give me the money and no one gets hurt." Mr. Kormos, who was alone in the store at the time, walked behind the counter to where the till was. Mr. Cornell remained at the other side of the counter, leaning on it with his left arm, and again said to Mr. Kormos, "You know what to do. Give me the money."

[3] When Mr. Cornell glanced away for a second, Mr. Kormos grabbed the bottom section of a pool cue that was behind the counter and swung it at Mr. Cornell's head, striking him in the area of his left ear. The bear spray in Mr. Cornell's hand was then discharged. Mr. Kormos locked himself in the office immediately behind the till and called 9-1-1, and Mr. Cornell fled the store.

[4] The RCMP attended, and with the assistance of the police service dog, located Mr. Cornell hiding under a picnic table in the McIntyre subdivision at approximately 11:10 p.m. Mr. Cornell was noted to have a significant amount of blood on his head. He was subsequently hospitalized and received five stitches to close a cut on his head which had been caused by the pool cue.

[5] In my view, the circumstances just outlined are serious. As I have stated in previous cases, robberies of unarmed and unprotected clerks, working alone in convenience stores, gas bars, hotels and similar commercial establishments, are a particularly pernicious form of robbery. As such robberies go, this was a relatively serious attempt. Mr. Cornell was masked and had armed himself with a knife and bear spray. This indicates to me that clearly there was a significant degree of planning for this robbery, since one does not generally find these items simply lying about. It is true

that no actual violence was offered to the clerk, but the real and palpable threat of it was clearly there throughout.

[6] In this case it is the situation of the offender that really lifts the matter beyond the reach of the precedents cited and most of the robbery cases that I have dealt with. The reason is that Mr. Cornell is, in my view, a career criminal. Though he is only 25 years old, he has a four-page criminal record. It is not only lengthy but is serious, persistent, and, in many instances, related to the present circumstances. Moreover, it appears that these offences were committed within days of Mr. Cornell's release from penitentiary on statutory release, and it must be noted that exactly the same things occurred on Mr. Cornell's release prior to the one before the robbery, that is to say that he committed a new and serious offence within days.

[7] Beyond committing offences, it appears that Mr. Cornell has done little. He has only a minimal work record. In my view there are no real mitigating factors in the present case. Mr. Cornell has entered early guilty pleas, but this is clearly and distinctly not a case like *R.* v. *Clooten* [2003] Y.J. No. 153 (QL) or *R.* v. *Linklater*, [2004] Y.J. No. 9 (QL), where the offender admitted to a robbery that in all likelihood would have otherwise remained unsolved. It is true that Mr. Cornell's plan of robbery did not succeed, but little turns on that since the robbery was thwarted by the clerk and not by a lack of resolve or purpose on the part of Mr. Cornell. I do note, however, that as this was an attempted robbery the maximum penalty is less than that for a completed robbery, specifically, being 14 years rather than life imprisonment.

[8] With respect to the charge of being masked, that offence, of course, was not an attempt, and the maximum therefore was and remains at 10 years.

[9] In speaking to sentence on Mr. Cornell's behalf, Mr. Coffin said that he had been advised that Mr. Cornell was under the influence of drugs at the time of the commission of these offences. If so, it is, in my view, hardly mitigating, since, as has been pointed out in many cases, robberies perpetrated by criminals under the influence of intoxicants are particularly dangerous, as the robber is more likely to act unpredictably.

[10] Mr. Coffin further suggested that the intoxication might not have been entirely of Mr. Cornell's own doing. However, in my view, given the preparations that clearly had been made, and Mr. Cornell's words and actions at the store, it is quite clear that he knew precisely what he was about, and that any claim of diminished responsibility must fail.

[11] Clearly, in my view, a deterrent sentence must be imposed, given that this was a convenience store robbery. Just as clearly, a significant sentence is called for, for the safety and protection of the public, having regard to Mr. Cornell's virtually unblemished record of getting in trouble with the law.

[12] For the Crown, Mr. Cozens submitted that a total sentence of from four to five and half years was warranted.

[13] For the offender, Mr. Coffin suggested a much lesser sentence, in the range of a year to 18 months. In support of that, Mr. Coffin pointed to a number of sentences for attempted robbery that were, indeed, in this lower range. However, if one looks at these

cases, there are many distinguishing features, with the possible exception of *R.* v. *R.W.L.*, [2004] Y.J. No. 82 (QL). None of these offenders had a criminal history of anything approaching that of Mr. Cornell's, and again, with the possible exception of *R.W.L.*, none were so quickly in trouble with the law again once released from their prior sentences.

[14] With respect to the attempted robbery for which R.W.L. was sentenced, the sentence appears to have been one of five months, in addition to seven months of actual pre-trial custody. However, in my view, that sentence must be understood as part of a much longer global sentence, since there were other offences involved. As well, there was evidence that R.W.L. suffered from a mental disability. There is the additional distinction that in *R.W.L.* there was no additional second offence of being masked with intent. As well, as I have previously mentioned, this is not a case where the offender is entitled to a particularly substantial discount because of his plea of guilty.

[15] Having given all due allowance to the fact that the plea was to a charge of attempted robbery, Mr. Cornell, you are sentenced to a term of imprisonment of three years to be served in a federal penitentiary. That sentence is to be consecutive to any sentence now being served. As I have considered the fact that you were masked as a seriously aggravating factor on the robbery charge, I sentence you on Count 2, that is the charge of being masked with intent, to a term of imprisonment of one year, to be served concurrently.

[16] In the circumstances, the surcharges are waived.

[17] There will also be an order whereby you will provide samples of bodily substances for the purposes of DNA analysis and banking. Additionally, you are prohibited from having in your possession any firearm, ammunition or explosive substance for a period of 10 years following your release from imprisonment. You are to surrender forthwith to the RCMP at Whitehorse any such items now in your possession.

[18] MR. COZENS: Your Honour, Mr. Coffin provided me just now, he was able to get a copy of a report from the provost that indicated that a DNA analysis had been taken on April 24, 2001 in respect of Mr. Cornell. And I'm looking at 487.053 that says, no order shall be made if the prosecutor advises the court the national DNA databank contains a DNA profile, within the meaning of section 2 of the *DNA Identification Act*.

[19] It would appear, although I don't have confirmation, the sample was taken here and actually got into the databank. It would appear that a sample was clearly taken in 2001, and I simply want to point that out.

[20] THE COURT: Well, then perhaps the order should direct that in the event that there is already a sample in the bank, that no further sample should be taken.

[21] MR. COZENS: Thank you.

FAULKNER C.J.T.C.