

Citation: *R. v. Jackson*, 2011 YKTC 14

Date: 20110307

Docket: 10-00581

10-00641

10-00645

10-00646

Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Cozens

REGINA

v.

WAYNE WENDELL JACKSON

Appearances:

Eric Marcoux

Nils Clarke

Counsel for the Crown

Counsel for the Defence

**REASONS FOR SENTENCING**

[1] COZENS T.C.J. (Oral): Wayne Jackson has pled guilty to two charges of having committed offences contrary to s. 334(b) of the *Criminal Code*.

[2] The circumstances of the first charge are that on October 12, 2010, Mr. Jackson stole approximately \$30 worth of groceries from Superstore. On November 12, 2010, he stole \$217.73 worth of meat from Superstore. All the items stolen were recovered. With respect to the second charge, on November 17, 2010, Mr. Jackson stole a jacket from Walmart worth \$61.95, and then on December 6, he stole approximately \$800 worth of DVDs, again from Walmart. All of these items were recovered.

[3] Mr. Jackson has been in custody on consent remand since December 6, 2010. He has an extensive criminal record; I counted 106 total entries, which includes 47 direct theft entries, plus numerous fraud, possession of property obtained by theft, and other theft related charges.

[4] Crown originally suggested a sentence in the range of 12 months to 15 months less credit for time served based upon a view that Mr. Jackson falls within the category of being an incorrigible offender. Counsel relied upon the cases of *R. v. Gibbs*, 2007 BCCA 241, and *R. v. Moore*, 1991 CanLII 1258 (BC C.A.), in support of this position, noting that protection of the public should be the paramount sentencing principle at play.

[5] After hearing submissions from defence counsel with respect to Mr. Jackson's possible change of attitude towards his offending behaviour and involvement in programming while in remand, the Crown submitted that a sentence at the lower end of the range would be appropriate. Defence counsel's original submission was that a sentence in the six to eight months range would be appropriate. A pre-sentence report was filed.

[6] Mr. Jackson is 44 years of age, a member of the Champagne/Aishihik First Nation. He has lived in foster homes from the age of three until he discharged himself at the age of 16. He had no contact with any members of his family until he was nine. He had no relationship with his father, who passed away in 1989. His father refused to acknowledge Mr. Jackson as his son, including directly to Mr. Jackson. Mr. Jackson's mother passed sometime between 2003 and 2010. Mr. Jackson met her once in Grade

5 and did not see her again until he was 17. He grew up, however, thinking that his mother had died.

[7] The information is that there was heavy drinking and physical abuse between his father and mother. Mr. Jackson believes that he had ten siblings; he was close to one sister who was placed in group homes with him and with whom he had a protective relationship. He has not seen her in over 12 years. He was not raised with his other siblings; some are currently sober and they live both in and out of the Yukon, some he has had no contact with in many years. There is no indication he has any meaningful or regular contact with the others.

[8] Mr. Jackson recalls his years growing up in group homes to be full of physical and sexual abuse, commencing after he reached the age of 10. He has a Grade 10 education with some adult and college preparation courses. He has not worked since 1998. He has two children, aged 11 and 17, that live in the Yukon and he sees them often. He has a history of drug addiction. He stated that his only coping strategies for the stress in his life were to get high on crack or IV drugs when he could afford them. Stealing was a means by which he obtained money to buy drugs. He has been assessed as having a severe level of problems related to drugs; however, as having no issues related to alcohol.

[9] Since being incarcerated at Whitehorse Correctional Centre, Mr. Jackson has completed the White Bison program. He has been in attendance with the drug and alcohol counsellor from ADS and attends AA meetings. He has had visits with elders and has participated in smudging ceremonies. He claims to have gained some insight

into his offending behaviour. He states that he is prepared to continue to take treatment and attend programming. I know Mr. Jackson has attended residential programming on three prior occasions: 1985, in Round Lake, at which he was kicked out shortly after arriving; 1991 and 1992, in the Crossroads 28-day program; and in 2004, Tsow-Tun Le Lum six-week program in Nanaimo, B.C.

[10] Mr. Jackson has been assessed using the LS/CMI as being at a very high risk to reoffend, in the 92 percentile. Drug use is the primary risk factor. Elevating his risk is his history of being raised in group homes and his criminal history. Mr. Jackson states that he has HIV and he also suffers from shingles contracted while in custody in Prince George. The shingles have left him partly paralyzed on one side of his body.

[11] I have considered the fundamental purposes of sentencing set out in s. 718 of the *Code*, and I agree that separation of Mr. Jackson from society is necessary to protect the public. Mr. Jackson's antecedents certainly place him within that category of offender who would be labelled incorrigible. That does not mean, however, that there is no prospect of rehabilitation. Mr. Jackson still has the potential and capacity to change his life course, and he may well have recently embarked on the first steps of such a journey. The sentence I impose must recognize the potential for Mr. Jackson's rehabilitation. I agree that Mr. Jackson's personal circumstances from the time of his birth have contributed significantly to Mr. Jackson's criminal offending behaviour, which has thus resulted in him facing a lengthy period of incarceration for what would otherwise be termed as shoplifting charges.

[12] While I have very little information about the history of Mr. Jackson's parents, the family dysfunction described in the pre-sentence report is unfortunately not that dissimilar to other cases which have come before this Court. I do not find it a stretch to consider that Mr. Jackson's aboriginal ancestry and the circumstances of his life may well have been a contributing factor to the offences which are before the Court today.

[13] Now, when this matter was first before me on February 23rd, an issue arose with respect to credit that should be given for remand custody. The case of *R. v. Johnson*, 2011 ONCJ 77, that was released on February 23rd - it might be the 23rd or 24th when it was first before me for sentencing, but the day before - raised issues with respect to the application of the truth in sentencing regime. There was an adjournment in order for counsel to make submissions based on this.

[14] When submissions were made on March 3rd, defence counsel took a position, based on *Johnson*, of 1.5 to 1. Crown counsel raised the issue of evidence that might be needed to be put before the Court. The matter was adjourned to today's date. In the interim, defence counsel and Crown counsel met with each other, discussed the matter, and the agreement that was reached between both parties is that the matter would be resolved by way of a joint submission and thus not necessitate this Court to embark on the application of *R. v. Johnson* in this regime. I have experienced counsel in front of me. They have done the work that they needed to do between then and today's date. I am not going to inquire any further. The matter can be dealt with on another day in another forum.

[15] The joint submission before me is for a sentence of nine months custody, less

three months credit for remand. I agree the matter can be left for another day. That is an appropriate sentence. I think it is a reasonable proposal that was reached by counsel, and therefore the sentence on all of the charges for Mr. Jackson will be nine months, less three months credit for time in custody, leaving six months custody to be served. That will be concurrent on both counts.

[16] The victim fine surcharges will be waived. Remaining counts?

[17] MR. MARCOUX: Stay of proceedings.

[18] THE COURT: Stay of proceedings on the remaining counts. I wish you the best, Mr. Jackson.

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COZENS T.C.J.