Citation: *R.* v. *Jansons*, 2007 YKTC 49

Date: 20070525
Docket: T.C. 97-01292A
95-00032C
Registry: Whitehorse

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

REGINA

v.

JURIS ALBERT JANSONS

Appearances:
Jennifer Grandy — Counsel for Crown
Keith Parkkari — Counsel for Defence

REASONS FOR JUDGMENT

[1] FAULKNER C.J.T.C. (Oral): The applicant, Juris Albert Jansons, seeks a stay of proceedings on charges he faces on the basis that his right under s. 11(b) of the *Charter* to be tried within a reasonable time has been infringed.

[2] Way back in October of 1997, Mr. Jansons was charged in Faro, Yukon with impaired driving, driving having consumed alcohol beyond the legal limit of 80 milligrams, a further charge of driving while disqualified and a further charge of breach of probation.

[3] In May of 1998, the applicant, who was represented by counsel, entered a guilty plea to the impaired driving charge, apparently as a result of a plea bargain arrangement. The matter of sentencing was adjourned from time to time, until September 15, 1998, on which date, Mr. Jansons was to make an application for a curative discharge. On September 15th, Mr. Jansons failed to appear in court. Counsel withdrew and a warrant for Mr. Jansons' arrest was issued.

[4] It later developed that Mr. Jansons had left the Yukon in July of 1998, and relocated to New Hazelton, British Columbia, where he still resides. It is not without significance that Mr. Jansons had nine prior drinking and driving convictions. Should his application for a discharge have failed, he faced a long period of imprisonment; see *R*. v. *Donnessey,* [1990] Y.J. No. 138 (C.A.).

[5] By April of 2000, the Yukon police had discovered Mr. Jansons' whereabouts. At that time, a decision apparently was made not to have Mr. Jansons returned from B.C. In addition to the expense of returning Mr. Jansons, the investigator in the file had also moved out of the Yukon and additional expense was anticipated in that regard.

[6] Matters rested there until 2002. In that year, the applicant had a couple of encounters with the police in British Columbia. On those occasions, Mr. Jansons was informed of the Yukon warrant but advised that he would not be returned on it as it was only Yukon-wide. In fact, in March of 2001, Crown counsel in the Yukon had directed that the warrant be made Canada-wide. However, it appears, for reasons that shall forever remain obscure, that the CPIC entry was not changed until much later, in December of 2003.

[7] Mr. Jansons' next encounter with the police was in late 2005 or early 2006, when police spoke to him about a matter involving the applicant's son. No mention of the outstanding Yukon warrant was made at that time. Finally, on January 24, 2006, Mr. Jansons was stopped for speeding in British Columbia. He was informed of and arrested on the Yukon warrant but released the next day on an undertaking to appear in Yukon court to deal with the outstanding charges.

[8] On behalf of Mr. Jansons, Mr. Parkkari concedes that the initial delay between the charge and the scheduled date for disposition was inherent delay. Circuit courts sit infrequently and applications for discharges can take a fair deal of time, owing to the requirements for medical assessments, testing and so on, before sentencing. Mr. Parkkari further concedes that the delay between the time the defendant failed to appear and when his whereabouts were discovered in British Columbia is attributable to the defendant. However, he says that once the police knew where Mr. Jansons was, they had a duty to move with greater diligence to execute the warrant and to get the matter moving forward again.

[9] This period of time, from April of 2000 to January of 2006, is just short of six years. Despite this great lapse of time, it is my view that the attempt to invoke s. 11(b) in the circumstances as described must fail. It is clear that the right to be tried within a reasonable time includes the entire proceedings, including the sentencing phase. See *R.* v. *MacDougall*, [1998] 3 S.C.R. 45. Neither would anyone deny that a delay on the order of six to nine years, depending on what periods one includes since the charges were laid, is a very long period of time. However, it does not follow that Mr. Jansons' s. 11(b) rights have been infringed, or, if they have, that he is entitled to a stay.

[10] In my view, the responsibility of the state in complying with s. 11(b) of the *Charter* is to make sufficient resources available so that those who want their matters conducted with reasonable dispatch are able to do so. It does not mean that unlimited resources must be made available to arrest and transport those who have absconded from justice. Any claim that the latter class of persons can invoke s. 11(b) is patently absurd.

[11] Clearly, the delay here was the result of action by the accused, and, as a result, he, not the Crown, must wear it. The delay was caused by Mr. Jansons' flight from justice. Afterwards, he did absolutely nothing to move the matter forward by contacting anyone. He did not even have to return to the Yukon Territory to deal with the matter; the matters could have been waived to British Columbia. What happened here is that the defendant, especially after being told by the police that the warrant would not be executed in B.C., decided that he could safely ignore the matter.

[12] It is quite true that the police could have acted more promptly to arrest Mr. Jansons. However, to argue that Mr. Jansons has been prejudiced in some way because the police failed to act more diligently in pursuing him, after he himself fled, defies common sense. The situation would be different if, as occurred in the *R*. v. *Ram,* [1993] B.C.J. No. 1492, and *R*. v. *Yellowstone*, [1990] A.J. No. 964, cases, the police did not act with any degree of diligence to bring the existence of a warrant issued at first instance to the attention of the defendant.

[13] In those cases, it could be reasonably argued that there was prejudice, because memories of the matter would fade and the defendant, being unaware of the allegations, would not be able to take timely steps to martial evidence on his behalf. As well, an

accused could take steps in his personal life that he might not have done had he been aware of the outstanding charges. So clearly, those kinds of cases are distinguishable from the case at bar. Not only has it not been shown that the accused has been prejudiced, but it could be reasonably argued that the delay has worked to the accused's advantage, since the Crown's present ability to make proof of the charges, should that become necessary, would be diminished by the effluxion of time.

[14] Moreover, it could be said that his chances of avoiding an actual custodial sentence have probably increased, given the effluxion of time and his relative lack of a record since 1996. To me, granting a stay in these circumstances would be contrary to common sense and the due administration of justice, since it would reward and encourage those who abscond. The longer the matter was delayed, the better the chance would be of avoiding the criminal sanction.

[15] In the result, the application is dismissed.

[16] MR. PARKKARI: I would ask that the matter go next Friday at one o'clock to fix a date for sentencing. In the meantime, I will seek instructions from my client. There are no pleas entered to the three counts on the original Information or the s. 145.

[17] THE COURT: June 1st, 1:00 p.m.

[18] MR. PARKKARI: Thank you.

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FAULKNER C.J.T.C.