

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Joe*, 2004 YKSC 82

Date: 20041129
Docket: S.C. 04-01525
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And:

PHILIP JAMES JOE

Publication of information that could disclose the identity of the complainant or witness has been prohibited by Court Order pursuant to s. 486(3) of the *Criminal Code*.

Before: Mr. Justice L.F. Gower

Appearances:

Peter Chisholm

Edward Horembala, Q.C.

For the Crown
For the Defence

**MEMORANDUM OF SENTENCE
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral):

INTRODUCTION

[2] Philip James Joe was found guilty following a trial in Pelly Crossing on the following charges: on Count #1, that he did between August 1 and 31, 2002, at Pelly Crossing, commit an assault on D.R. by carrying a weapon, namely a knife, contrary to s. 267(a) of the *Criminal Code*; on Count #2, that at the same time and place, he

unlawfully confined D.R., contrary to s. 279(2) of the *Criminal Code*; and on Count #3, that at the same time and place, he knowingly uttered a threat to D.R. to cause bodily harm to her, contrary to s. 264.1(1)(a) of the *Criminal Code*. The main issue in this sentencing is whether Mr. Joe is deserving of a conditional sentence for these offences.

FACTS

[3] The facts are important and so I will take some time to go through them as found by me in an earlier decision filed November 26, 2004.

[4] D.R. and her then boyfriend went to Pelly Crossing in August 2002 for the boyfriend, G.M., to look for work. D.R. had only been to Pelly Crossing one time before that.

[5] G.M. took D.R. around Pelly Crossing and introduced her to friends and family. G.M. did some drinking when two other people showed up, namely F.G. and the accused. Those two had also been drinking; however, D.R. was sober. She had not previously met either F.G. or Mr. Joe before.

[6] The group drove around in F.G.'s truck with D.R. driving for a period of time. Eventually, they went to Mr. Joe's home in Pelly Crossing where more drinking took place.

[7] D.R. drank only one to one and a half ounces of vodka, but the other three continued to drink rather heavily and everyone except D.R. got louder and drunker as the evening progressed.

[8] Mr. Joe's eyes at one point were drooping and he was slurring his words. He tried to get his dog to do some tricks and when it did not he got angry and yelled at the dog and punched it in the face. D.R. asked him why he did that and he told her to mind her own business.

[9] G.M. eventually passed out while sitting on a chair at the kitchen table at about 11:00 p.m. or midnight. Mr. Joe dragged G.M. into his bedroom and said to D.R. that she and G.M. could spend the night at his residence. F.G. left Mr. Joe's residence shortly after that.

[10] Mr. Joe made a bed with pillows on the floor near the couch in the living room and asked D.R. if she was going to sleep with him there. D.R. said no, she was not like that, and that she was going to sleep with her boyfriend in the bedroom. Mr. Joe mumbled, "Why not," or something like that and D.R. went into the bedroom.

[11] A few minutes later, Mr. Joe entered the bedroom, the light was on and G.M. was passed out on the bed. Mr. Joe pulled the velcro closure on one of D.R.'s pants pockets. She kicked him in response and told him to get out, which he did.

[12] Mr. Joe then came in a second time and tried to grab the waist of D.R.'s pants, as if to take off her pants. The light in the bedroom was still on and G.M. was still passed out. Again, D.R. kicked at Mr. Joe and yelled at him to get out.

[13] He went to the closet to grab something, including what seemed to be a bow and left the room.

[14] D.R. heard Mr. Joe yelling and screaming outside the bedroom. He peeked in the bedroom door, alternately holding a bow and a rifle-styled airgun, saying "I" and alternately, "We," "are going to rape you, kill you and cut you up". He would move the weapons around the room while saying this as if scanning the room with them. Once he peeked in holding a knife. This happened about 15 times over the course of 30 minutes to approximately one hour. Each time the bedroom light was on.

[15] D.R. was consistently trying to rouse G.M without success.

[16] She tried to leave the bedroom with the intention of challenging Mr. Joe. Mr. Joe blocked her exit out the front door while holding a knife. Mr. Joe stuck the knife point into the kitchen table between D.R.'s thumb and forefinger. D.R. returned to the bedroom.

[17] She then heard glass breaking in the kitchen. She also heard a knock at the door. She waited and it got very quiet. She peeked out into the main room. She saw Mr. Joe sleeping or appearing to be sleeping on the bed that he had made on the floor by the couch.

[18] D.R. ran to the front door crying, to meet F.G., who had returned for her can of tobacco. D.R. and F.G. managed to rouse G.M. to his feet and get him out of Mr. Joe's house and into F.G.'s truck.

[19] D.R. and G.M. spent that night at F.G.'s house. The next day, at a potlatch, Mr. Joe apologized to D.R. and G.M. for being drunk and said that he did not mean to do it.

[20] While I found as a fact that the apology was offered by Mr. Joe, it is interesting that in his evidence at trial he denied making such an apology.

CIRCUMSTANCES OF THE OFFENDER

[21] Mr. Joe's circumstances are that he is 33 years old, a lifelong resident of Pelly Crossing. He was raised by functional and supportive parents. He has five siblings, three sisters and two brothers.

[22] His mother, Betty Joe, is 70 years old, is a minister at the community church in Pelly Crossing, as well as working at the local school teaching native language. She has a very close relationship with Mr. Joe.

[23] His father, Danny Joe, is 74 years old and is currently the principal of the Elders Council in Pelly Crossing. He previously held the position of MLA for the Pelly-Carmacks riding for two terms and was also the Chief of the Selkirk First Nation for 12 years.

[24] Philip Joe went as far as grade nine in school and then quit school because of some difficulties with the school principal. Mr. Joe perceived that principal as someone who would not treat him fairly and was always on his case.

[25] He considered upgrading at the local community college campus, but has only made one call to inquire about that and has not followed up to date. He has completed courses in log building and a carpenter's helper course, as well as an elementary plumbing course.

[26] He has never had full-time permanent employment. He has mainly worked on a seasonal and sporadic basis in the areas of maintenance, log building or carpentry.

[27] He is interested in pursuing training in the field of electronic repair and small engine repair and presently installs satellite dishes for community members in Pelly Crossing on an as-needed basis.

[28] He has received social assistance on a fairly regular basis.

[29] He has been involved in a common-law relationship with M.I., age 34, for about two years.

[30] He has one daughter, age 15, from a previous relationship with C.B.. He does not provide child support for the daughter and sees her only sporadically.

[31] He is involved in several team sports a number of times per week. He moved out of his parents' home at the age of 30 and has had his own residence in Pelly Crossing for about the last three years.

[32] Mr. Joe has a significant alcohol problem, as I found as a fact at the trial. Initially, in his evidence at the trial, he said he was not really a heavy drinker and only drank occasionally and socially and that on the evening of the offences, he drank only in what he described as a "social manner." However, he acknowledged later on in his evidence at the trial that he had a lot of liquor that night and fell asleep because he was passed out. He admitted that his memory could have been hazy about the events of the evening and finally acknowledged that he had been to an alcohol treatment centre in the past and that it was fair to say that he does have a drinking problem.

[33] At page 8 of the pre-sentence report, Mr. Joe is noted to have conceded that until very recently, he said that he had an alcohol problem, but believes that that does not hold true today. He told the pre-sentence report author that he has not drunk since October 15, 2004, and is adamant about his intention to remain sober indefinitely. He said to the probation officer, "it feels good not to drink and I don't miss it. All I need is my girlfriend and family around to keep supporting me".

[34] He acknowledged that part of his motivation to stop drinking was the fact that his girlfriend also wanted to quit and so they are trying to remain sober together. However, prior to this point in time, M.I. concurred that both she and Mr. Joe drank quite a bit. They would drink whatever alcohol was available. They would typically purchase large amounts of alcohol and drink it until it was all gone.

[35] M.I. told the probation officer that this most recent period of sobriety is the longest that they have experienced in their relationship.

[36] Mr. Joe acknowledged that he started drinking around the age of 18 and that his alcohol usage increased to the point where he was intoxicated several days of the week. He told the probation officer that his alcohol abuse has been the root problem for him in many facets of his life, including work and family relationships, arguments between him and his girlfriend, both past and present, and problems with the legal system.

[37] He attended for alcohol treatment in 1994 and again in 1999 and thinks that he would benefit from further treatment and is agreeable to becoming involved in further programming.

[38] He is currently seeing Andy Nieman as an alcohol counsellor. Mr. Nieman filed a letter of support for Mr. Joe, saying that he has seen Mr. Joe for a number of sessions and he is optimistic that Mr. Joe has the capability to come to terms with his alcohol problem and achieve success.

[39] Mr. Joe is also working with a psychologist, Mr. Bill Stewart, in concert with Mr. Nieman.

[40] Corporal McPhee, of Pelly Crossing RCMP Detachment, told the probation officer that he believes Mr. Joe has a substantial drinking problem. He conveyed that although he could not say anything against Mr. Joe receiving a community disposition, he added, "I think Philip is at risk to commit general and sexual assault every time he drinks." He thinks that Mr. Joe is also in need of counselling through the sex offender program and substance abuse counselling, and that a probation order of some length would also be beneficial.

[41] In summary, the probation officer concluded that Mr. Joe has a serious alcohol problem, that he is only in the "infancy of his sobriety," that he has made minimal efforts to secure work on a regular basis and only cursory attempts at upgrading his education. He concluded that Mr. Joe is someone who seems to be content with just getting by.

[42] It was of grave concern to the probation officer that Mr. Joe takes absolutely no responsibility for the criminal behaviour he was found guilty of, demonstrates no level of remorse for the victim, and actually blames D.R., the victim, for the situation he finds himself in.

THE VICTIM'S CIRCUMSTANCES

[43] D.R. filed a victim impact statement in which she noted as follows:

Since this incident I have become very withdrawn due to my lack of trust for anyone.

I never go out socially with friends anymore. I become very scared when alone at night.

I now hate being alone and cry over any stress that comes along.

[P.] seems to assume no liability for his behaviour and that was proven to me when he tried to say sorry to me the next day. He thinks that being drunk is an excuse for perverse and violent behaviour, not does show any remorse. His actions that night were of a spoiled child's temper tantrum being refused candy at the store.

I take that last comment to be a reference to her refusal to entertain Mr. Joe's proposal to have sexual relations that night.

[44] As well, D.R. told the probation officer that both she and her boyfriend had to leave Pelly Crossing due to the continuous harassment from the Joe family. She says that her boyfriend was the Lands Manager for the First Nation and she worked for the Yukon Government in Health and Social Services. She contends that they have suffered significant financial losses because of this ordeal.

THE CASE LAW

[45] Turning to the case law, I refer to the *R. v. Morris*, [2004] B.C.J. No. 1117, decision that was filed by the Crown. At paragraph 54 of that decision there is discussion of the principle of sentencing under s. 718.2(e), which requires the Court to

pay particular attention to circumstances of aboriginal offenders when considering available sanctions other than imprisonment. There is a reference to *R. v. Gladue*, [1999] 1 S.C.R. 688, and *R. v. Wells*, [2000] 1 S.C.R. 207, both from the Supreme Court of Canada.

[46] At paragraph 54, the British Columbia Court of Appeal in *Morris*, quoted Chief Justice Lamer at paragraph 80 of the *Gladue, supra*, decision as follows:

As with all sentencing decisions, the sentencing of aboriginal offenders must proceed on an individual (or case-by-case) basis: For this offence, committed by this offender, harming this victim, in this community, what is the appropriate sanction under the Criminal Code?

[47] And later at paragraph 55 of *Morris*, Mr. Justice Iacobucci was quoted from his decision in *Wells* at paragraph 42:

As held in *Gladue*, at para. 79, to the extent that generalizations may be made, the more violent and serious the offence, the more likely as a practical matter that the appropriate sentence will not differ as between aboriginal and non-aboriginal offenders, given that in these circumstances, the goals of denunciation and deterrence are accorded increasing significance.

[48] The British Columbia Court of Appeal in *Morris* then went on to say at paragraph 56, and I quote:

...The fundamental principle of sentencing requires, for aboriginals and others alike, that the sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender: s. 718.1

[49] In *R. v. Proulx*, [2000] 1 S.C.R. 61, the Supreme Court of Canada discusses the four pre-conditions for a conditional sentence at paragraph 46 and those are, and I quote:

- (1) the offender must be convicted of an offence that is not punishable by a minimum term of imprisonment;
- (2) the court must impose a term of imprisonment of less than two years;
- (3) the safety of the community would not be endangered by the offender serving the sentence in the community; and
- (4) a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[50] I will say right off that conditions 1 and 2 are not of concern to this Court. Rather, my analysis is focussed principally on condition #3, and collaterally on #4.

[51] With respect to the issue of the safety of the community, the Supreme Court of Canada went on to discuss in *Proulx, supra*, at paragraphs 69 and 70, the variety of factors that would be relevant in assessing the risk of re-offence. Included in those factors are the nature of the offence, the circumstances of the offence, the degree of participation of the offender, the relationship of the offender with the victim, the profile of the offender, including his occupation, lifestyle, mental state and so on, and the offender's conduct following the commission of the offence.

[52] It is also noted that a court must be aware of the supervision available in the community in which the conditional sentence is to be served, and I quote from paragraph 73:

...If the level of supervision available in the community is not sufficient to ensure safety of the community, the judge should impose a sentence of incarceration.

ANALYSIS

[53] Dealing specifically with the issue of risk: This is a situation where Mr. Joe does not get the benefit of having entered a guilty plea, and after having been found guilty, he still denies his guilt entirely.

[54] He has been inconsistent about admitting the nature of his alcohol problem, as I have already commented. He has also been inconsistent in acknowledging the relationship between his alcohol problem and these offences.

[55] At page 11 of the pre-sentence report, the probation officer said:

Mr. Joe has no doubt that he finds himself in his current situation due to his abuse of alcohol.

And yet only a few lines later, the probation officer says:

Also he considers himself a "nice guy" and cannot fathom how this state of affairs came about. Finally, he believes he is innocent and the whole situation he is currently embroiled [in] is unjust.

[56] The probation officer did a criminogenic risk assessment entitled "Level of Service Inventory-Revised" on Mr. Joe. That assessment placed him in the low/moderate risk category. It is noted in the pre-sentence report that offenders with similar scores have a 31.1 per cent likelihood of re-offending within one year. The identified areas of risk for Mr. Joe are his education and employment as well as his alcohol problems.

[57] Clearly, Mr. Joe has taken no responsibility for his actions, nor does he feel any remorse for the victim. In fact, he blames the victim for his current state of affairs.

[58] What is also a concern to this Court is that his mother, Betty Joe, who is very close to Mr. Joe and sees him on a daily basis, indicated to the probation officer, at page 2 of the pre-sentence report, "that some of the blame for the charges that Philip is facing belongs to the victim." I feel that there is a real danger that that kind of attitude may enable Mr. Joe to continue denying the extent and depth of his alcohol problem.

[59] I am also concerned about the evidence of Mr. Joe's 15 year old daughter, K., and his previous relationship with C.B.. The pre-sentence report indicates at page 6 that Mr. Joe told the probation officer that he has a daughter, K., who is 13 years old. He claimed his relationship with C.B. ended because she became "insanely jealous" and that he now sees the daughter, K., whom he thought was living with a maternal aunt in Whitehorse, two to three times per month and that the relationship is a good one.

[60] However, C.B. was also interviewed by the probation officer. She told the probation officer that they ended their relationship because of Mr. Joe's alcohol abuse. She went on to say that alcohol has been a factor in many of Mr. Joe's problems, ranging from employment, relationships and brushes with the law. She says that the daughter, K., is 15 years old, not 13 as Mr. Joe said, and that she has no contact with Mr. Joe.

[61] The probation officer also spoke with C.D., who is the maternal aunt with whom K. resided. She corroborated the fact that Mr. Joe did not have anything to do with K. when she was living with her; indeed he did not have any contact with her whatsoever.

[62] So it is pretty clear that Mr. Joe was either dishonest with the probation officer in the way he described his relationships with K. and C.B., or he was seriously delusional about those relationships. Neither explanation gives me much confidence that he would abide by a conditional sentence and not endanger his community.

[63] In addition, the evidence that he has never paid child support is consistent with his overall failure to take responsibility for his actions, which in turn is a feature of his relative immaturity and his inability to act as an adult.

[64] I am also troubled that the pre-sentence report notes at page 5 that Mr. Joe currently does not have any friends, despite his belief that he makes friends easily because of his outgoing personality and sense of humour. That leads me to conclude that his alcoholism and his immaturity may have affected his ability to maintain healthy adult relationships.

[65] I am not sure that this is the right language, but my understanding of one of the steps of the 12-step program in Alcoholics Anonymous requires an alcoholic to do what is called a fearless and searching moral inventory of their shortcomings. That is considered an integral step on the road to recovery. That is something which I would suggest Mr. Joe is in dire need of doing, to be honest with himself about his shortcomings and the way that his conduct has impacted those around him.

CONCLUSION

[66] In my view, imposing a conditional sentence across the board for all three offences would, to use the words of the British Columbia Court of Appeal in *Morris*, *supra*, at paragraph 62, send a completely wrong message to the victim, to Mr. Morris, and the community. And to paraphrase the balance of that paragraph, an incident of violence such as this in a community like Pelly Crossing, where alcohol abuse and violence is epidemic and victims are intimidated, clearly calls for a sentence that provides some deterrence in a general sense, and, more importantly perhaps, denunciation of the conduct.

[67] Count #1, according to the *Criminal Code*, has a maximum jail sentence of ten years. In my view, the need for denunciation and deterrence is paramount in sentencing Mr. Joe for that offence. The appropriate sentence for Count #1 is a term of six months incarceration.

[68] As for Count #2, again the maximum jail sentence is 10 years, under the *Criminal Code*. Now, having received, hopefully, the deterrent benefit of the six-month jail sentence, I feel that the risk to the community of Pelly Crossing, with the imposition of

appropriate strict conditions, can be reduced to a level where the community would not be endangered by Mr. Joe serving this sentence in his community. I am prepared to impose a consecutive sentence on Count #2 of six months imprisonment to be served conditionally in the community, pursuant to s. 742.1. I will go over the conditions of that conditional sentence in a moment.

[69] With respect to Count #3, my intention is to suspend the passing of sentence and place Mr. Joe on probation for a period of 18 months to follow the completion of both his jail term and his conditional sentence term. I will specify the conditions of his probation order shortly.

[70] The imposition of a conditional sentence consecutive to a true jail sentence is authorized in the case of *R. v. R.A.R.*, [2001] 1 S.C.R. 163, which is a case out of the Supreme Court of Canada, as well as *R. v. Ploumis*, [2000] O.J. No. 4731, a decision of the Ontario Court of Appeal. While imposing both a true jail term and a conditional sentence for different offences arising out of essentially similar facts may initially appear inconsistent, I wish to emphasize that my intention here is to both denounce and deter the offender by the jail term on Count #1. Then, having had the benefit, hopefully, of that deterrence, I have greater confidence that the offender will be able to abide by the terms of a conditional sentence to follow, rather than risk being re-incarcerated for a breach of the sentence.

[71] Finally, I want to maximize the rehabilitative effect of the overall sentence by placing Mr. Joe on probation for a period of 18 months, the focus of which will be to ensure that he stays sober and pursues a healthy and productive lifestyle.

[72] The conditional sentence will be for a period of six months. The statutory terms will apply:

- (1) You will keep the peace and be of good behaviour and appear before the court when required to do so.
- (2) You will report to a sentence supervisor within two working days after the making of this order and then as required by the supervisor and as directed by the supervisor.
- (3) You will remain within the jurisdiction of the court unless written permission to outside the jurisdiction is obtained from your supervisor.
- (4) You will notify the supervisor in advance of any change of name, address or employment.
- (5) You will take such psychological assessment, counselling, programming and treatment as and when directed by the supervisor.
- (6) You will take such other assessment, counselling, programming and treatment as directed by your supervisor.
- (7) You will take such steps towards upgrading your education and life skills as directed by your supervisor.
- (8) You will take such alcohol counselling, assessment, programming and treatment, including residential alcohol treatment programs, as directed by your supervisor, and abide by the rules of any alcohol treatment residence.
- (9) You will abstain absolutely from the possession, consumption and purchase of alcohol, and submit to a breathalyzer or urinalysis or bodily fluids or blood test, upon demand by a peace officer or your sentence supervisor, if they have reason to believe that you have failed to comply with his condition.
- (10) You will have no contact directly or indirectly with D.R.
- (11) You will make reasonable efforts to find and maintain suitable employment and provide your supervisor with all necessary details concerning your efforts.
- (12) You will reside as such a place as approved by your supervisor and not change that address without prior written permission.

- (13) You will not have in your possession any firearms, knife or other weapon or ammunition or explosive substance.
- (14) You will remain within your residence for the four months of your conditional sentence, that is, specifically the first 120 days of that sentence, subject to the following exceptions only:
 - (a) to meet with your supervisor following a pre-arranged appointment;
 - (b) to attend court if required by the court;
 - (c) for religious purposes at a specific place and time in writing by your supervisor;
 - (d) for medical treatment for yourself or your immediate family;
 - (e) to shop for groceries and items required for daily living during a period of no more than two hours, twice a week, on Wednesday and on Saturday, from 2:00 p.m. to 4:00 p.m., or with written permission during any other periods allowed by your supervisor;
 - (f) to exercise every evening for two hours between 7:00 p.m. and 9:00 p.m., or at any other time authorized in writing by your supervisor;
 - (g) for the purposes of your employment, should you obtain employment, from 7:00 a.m. to 7:00 p.m., or as approved in writing by your supervisor;
 - (h) to pursue your studies at Yukon College campus in Pelly Crossing on the days and at the times approved in writing by your supervisor; and
 - (i) to meet with any persons such as relatives, therapists, attending AA meetings or the like, provided your supervisor has approved in advance and in writing, the nature, place, time and duration of those meetings.
- (15) Next you are to have at all times in your possession, the conditional sentence order and any written permission given to you by your sentence supervisor, and at the request of any peace officer, you must show both documents.
- (16) While being detained at your residence, providing you have a phone, you must answer all telephone calls that you receive so that your supervisor can check that you are inside your residence. In order for you supervisor

to be able to verify that you are inside your residence, you are not to talk on the telephone for more than 15 minutes at a time.

- (17) In addition, when a supervisor comes to your residence, or an RCMP officer, during the time that you are to be inside your residence, you must allow him or her to enter in order to ensure that the conditions of your conditional sentence are being abided by.
- (18) For that last two months of your conditional sentence, the last 60-day period, you will not be subject to house arrest, as I have indicated, but you will be subject to a curfew; to be in your residence between the hours of 10:00 p.m. and 7:00 a.m. daily unless with the prior written permission of your sentence supervisor.

[73] Following the completion of your conditional sentence, you will be placed on probation for a period of 18 months, subject to statutory terms:

- (a) you will keep the peace and be of good behaviour and appear before the court when required to do so;
- (b) you will notify the court or your probation officer in advance of any change of name, address or employment;
- (c) you will report to a probation officer within two working days after the making of the probation order and then as required and directed by that probation officer; and
- (d) you will remain within the jurisdiction of the court.

[74] Generally, these probation conditions are similar to what is the conditional sentence, so I will just go through them in a summary manner and hand the actual words over to Madam Clerk:

- (1) You will take such psychological assessment, counselling and treatment as directed and such other assessment, counselling and treatment as directed.
- (2) You will pursue your education and life skills as directed.

- (3) You will pursue alcohol assessment, counselling, programming and treatment, as well as residential treatment as directed.
- (4) You will abstain absolutely from the possession or consumption of alcohol and submit to a breathalyzer or urinalysis or bodily fluids or blood test upon demand by a peace officer or probation officer who has reason to believe that you have failed to comply with this condition.
- (5) You will continue to have no contact directly or indirectly with D.R.
- (6) You will continue to make reasonable efforts to find suitable employment.
- (7) You will reside at such place as approved by your probation officer and not change that residence without prior written permission.
- (8) You will continue to abide by a curfew, remaining within your place of residence between the hours of 10:00 p.m. and 7:00 a.m. daily, unless with the written permission of your probation officer.
- (9) Nor will you have any weapons of any kind, including firearms, a knife or other weapon or ammunition or explosive in your possession.

[75] It is also mandatory that under s. 109(2)(a) of the *Criminal Code*, I prohibit you from possessing any firearms, ammunition or explosives for a period of ten years.

[76] The Crown has also asked for an order under s. 487.051 for a DNA order, requiring you to provide samples for DNA analysis and registration.

[77] The victim surcharge will be waived in all the circumstances.

[78] Counsel, have I omitted anything?

[79] MR. CHISHOLM: I don't believe so, My Lord. I do have an original signed document, the order authorizing the taking of bodily substances, that has been approved as to form by my learned friend and I will give that to Madam Clerk.

[80] THE COURT: Mr. Joe, will you please stand?

[81] I know that your counsel will go through and explain to you what the meaning of a conditional sentence is and what the consequences of breaching that sentence are and your counsel will also explain the same aspects of the probation order, but what I would like to convey to right now is, in general, if you are found in violation of any of the terms of your conditional sentence, then you can be arrested and you can be detained in custody for the balance of that term. There is no time off for good behaviour with a conditional sentence, so if you are required to serve the balance of your sentence then it will be for the full period of six months.

[82] Now, my reasons speak for themselves and I will not go into those reasons again. What I am hoping is that one of the things that you will take advantage of while you are incarcerated in Whitehorse Correctional Centre is the Alcoholics Anonymous program, if you are serious about wanting to quit drinking. I am satisfied that you do intend to do that, because otherwise you would not be meeting with Mr. Nieman and Mr. Stewart. Your spouse is behind you now and I hope that that continues.

[83] I wish you the best of luck because I feel that this is really the core of all your problems. If you can come to grips with your alcohol problem, then the rest of your life will fall nicely into place and you will have a healthy and productive future. One of the ways that you can do that is by taking advantage of the Alcoholics Anonymous program at the jail and that is something that you can take back to the community with you. If you do not deal with your alcohol problem, it is only a matter of time before you are back before the courts.

[84] Thank you.

GOWER J.