

SUPREME COURT OF YUKON

Citation: *R. v. Corcoran*, 2009 YKSC 14

Date: 20090227
Docket S.C. No.: 07-01503D
07-01503E
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

THOMAS JOSEPH CORCORAN

Before: Mr. Justice R.S. Veale

Appearances:
Kevin Komosky
Thomas Corcoran

Appearing for the Crown
Appearing on his own behalf

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): Mr. Corcoran is serving a 12-month conditional sentence on a charge of possession of cocaine for the purpose of trafficking. He has at this point served approximately nine months of that conditional sentence, which nine months was under a term of house arrest and there was an additional three months under curfew.

[2] There are two allegations of breach. The first allegation arises out of an event on February 3, 2009. Mr. Corcoran had written permission from his conditional sentence supervisor to be out of his residence on a daily basis between the hours of 1:00 and 3:00 p.m. On February 3, 2009, the police saw him driving towards his residence and

followed him and stopped him. He produced his written permission, and the time recorded by the police was 3:26 p.m. in the afternoon. In other words, 26 minutes outside of the time that he was permitted to be away from his residence.

[3] Mr. Corcoran acknowledges candidly that he was outside the allotted time, and he states that the reason for doing so was that he was purchasing a vehicle taillight at Wal-Mart, and in fact he did produce to the RCMP a receipt from Wal-Mart, which the RCMP indicated was stamped 3:01 p.m., in other words, one minute outside of his allotted daily time to be out of his residence.

[4] The question, under s. 742.6(9), is whether the Court is satisfied on a balance of probabilities that Mr. Corcoran has breached his house arrest condition without reasonable excuse. The proof of reasonable excuse lies with him.

[5] It is a somewhat technical breach. I have no objection, of course, to the police picking him up and arresting him, because he was in fact in technical breach; however, the explanation that he has given provides some reasonable excuse, and I am prepared to accept that excuse on this occasion because of the timing being so close to the time that he was required to return to his residence at 3:00 p.m. So there is a technical breach but I find that his explanation was reasonable.

[6] The second breach allegation relates to an allegation that he possessed a sunglass pouch which had contents that have been confirmed to be cocaine. There was a pat-down search done of Mr. Corcoran at the time of his arrest outside his residence. It was not a complete search by any stretch. He was taken into the RCMP cells on February 3rd and a further search was done. My view of that search is that it was not

the same kind of complete strip search that is done on entry to the Whitehorse Correctional Centre.

[7] On February 4, the next day, he was taken up to the Whitehorse Correctional Centre and was placed in a holding cell, alone. He was asked by Correctional Officer Claggett to remove his clothing and pass it through, and he did so, he complied with that. When he was removing his underwear, Correctional Officer Claggett has testified that he saw a jerking motion, and when he went to see what had taken place there was a sunglass pouch underneath a bench in the cell.

[8] There is some dispute in the evidence about whether Mr. Corcoran passed the pouch to Mr. Claggett or whether Mr. Claggett had to enter the cell and obtain the pouch on his own. There is no question that Mr. Corcoran at all times denied that he had possession of either the sunglass pouch or the cocaine contents in it.

[9] Further evidence was given by a fellow inmate, Steven Wolfe, who confirmed Mr. Corcoran's denial of possession of the sunglass pouch and cocaine.

[10] The evidence of Correctional Officer Claggett was that the cell had been inspected on two occasions before Mr. Corcoran entered, and on those two occasions the cell was adjudged to be clean.

[11] So, once again, the test to be applied is not a test of proof beyond reasonable doubt, which would be required under a substantive charge, but rather whether on the balance of probabilities Mr. Corcoran was breaching a condition of the conditional sentence order.

[12] My assessment of the situation is that the evidence is clear, in my view, that the cocaine had to be in the possession of Mr. Corcoran when he entered the cell, and I accept the evidence of the correctional officer that he was trying to hide both the sunglass pouch and the cocaine underneath the bench in his cell.

[13] On a balance of probabilities, I find that it is more reasonable that the cocaine came into the cell that way, rather than some speculative suggestion that it was there on his arrival. That is my finding.

[14] So on the first breach, I have found that you are not in breach. On the second breach, I am of the view that the breach has been established on the balance of probabilities.

VEALE J.