

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Goodman*, 2005 YKSC 70

Date: 20051207
Docket: S.C. No. 04-01548C
04-01548D
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

CARY MELVIN GOODMAN

Before: Mr. Justice R.S. Veale

Appearances:
David McWhinnie
Christina Sutherland

For the Crown
For the Defence

**MEMORANDUM OF SENTENCE
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): Mr. Goodman was given a conditional sentence of 15 months of house arrest on October 18, 2005. As the sentencing judge, I went to some length to explain that he was not given a curfew, but rather had been ordered to remain inside his residence and I specifically used the terminology house arrest to distinguish between curfew and house arrest.

[2] The conditional sentence order, which was signed by Mr. Goodman, was very clear and I quote from paragraph 7:

You must remain inside your residence except for reporting to your conditional sentence supervisor as your conditional sentence supervisor requires.

[3] Paragraph 10:

Your conditional sentence supervisor may give you written permission to be away from your residence for the purpose of

- a) going directly to your place of work or education and working or studying and then returning directly to your residence after working or studying.

Paragraph 10 goes on to indicate a number of other matters that can be dealt with by written permission.

[4] There are three allegations of breaches of this conditional sentence order.

Mr. Goodman was arrested and brought to court on October 27, 2005, and he was released on the condition that he continue to follow the terms of the conditional sentence order of October 18, 2005.

[5] The first allegation of breach relates to a hockey game on October 21, 2005.

The specific written permission that had been given to Mr. Goodman by Mr. Netzel made no reference to a hockey clinic on Friday the 21st. The evidence was clear that there was a hockey clinic on the evening of Friday the 21st and the evidence was also clear from Mr. Netzel that he gave a verbal authorization to Mr. Goodman to be at that hockey game. That, of course, was confirmed by Mr. Goodman in his evidence. In other words, although the written permission, which is the only permission that is permitted by the conditional sentence order, did not specify that he could go to the clinic on Friday the 21st, there was a verbal authorization. I find that it is a reasonable excuse

on that occasion, only because Mr. Netzel agreed verbally that he could attend the hockey clinic.

[6] I want to be very clear that under no circumstances should a conditional sentence supervisor ever give a verbal authorization to an offender under a conditional sentence order that makes it very clear that permission can only be given in written form. But for the fact that Mr. Netzel agreed that he had given the verbal permission, I would have found that there was a breach, but in these circumstances, I am satisfied that Mr. Goodman has provided a reasonable excuse.

[7] The second allegation of a breach occurred after Mr. Goodman was brought to court on October 27, 2005, and released on the bail conditions to follow the terms of the conditional sentence order of October 18, 2005.

[8] Mr. Goodman had it brought home to him very clearly on October 27, 2005, that conditional sentence orders were not to be trifled with. He spent several hours in custody and was brought before a judge, I believe, who allowed him out on bail. On that date and in court he was given a memorandum in writing from his conditional sentence supervisor, directing him to attend for an appointment on Friday, October 28, 2005, at 8:00 a.m. It states clearly:

At this appointment your work schedule and leisure schedule will be discussed and direction will be given to you regarding compliance of your conditional sentence order.

[9] The reason for that direction was very clear. Although Mr. Netzel had, once again, given verbal permission to continue working, without the written permission, it was very clear that the conditional sentence supervisor wanted him under written

permission with respect to work. But he was having difficulty getting Mr. Goodman to provide the information about his work schedule. Mr. Netzel was not prepared, as he stated, to provide him with a blank work-any-time-you-wish schedule.

[10] Mr. Goodman attended on the 28th, but did not provide the required information for the work schedule. Accordingly, no written permission to work was given, but Mr. Netzel, encountering the difficulty that he has with Mr. Goodman, requested his manager, Mr. Gaudry, to come into the meeting and Mr. Gaudry gave a verbal direction that Mr. Goodman should appear at 8:00 a.m. or shortly thereafter on November 1st, to meet with his conditional sentence supervisor and provide the work and leisure schedule. In my view, from the evidence, there is absolutely no doubt that Mr. Goodman understood that direction, particularly because, in the circumstances, it was discussed why Mr. Netzel was not available until November 1st.

[11] Mr. Netzel was required to make phone calls on November 1st to determine where Mr. Goodman was because he did not appear. Mr. Goodman indicated that he thought it was a Wednesday, rather than Tuesday, November 1st. In his evidence in court, Mr. Goodman indicated that he just could not recall what the direction had been. In my view, I find that there has been a clear breach of a direction given to Mr. Goodman in circumstances, after a court appearance, where he should clearly have followed the direction.

[12] The third breach is admitted. He was not at his residence on November 2, 2005, and had no written permission to be away from his residence.

[13] So I therefore find that Mr. Goodman has breached his conditional sentence order on two occasions in a matter of a little over two weeks from that order being given to him.

[14] In the case of *R. v. Proulx*, [2000] 1 S.C.R. 61 (QL), in the Supreme Court of Canada, this comment was made with respect to breaches of conditions and I am going to read from paragraph 39 from the judgment of Chief Justice Lamer. He stated:

More importantly, where an offender breaches a condition without reasonable excuse, there should be a presumption that the offender serve the remainder of his or her sentence in jail. This constant threat of incarceration will help to ensure that the offender complies with the conditions imposed.

He goes on to say:

It also assists in distinguishing the conditional sentence from probation by making the consequences of a breach of condition more severe.

[15] So it appears that there is a presumption that there will be a complete collapse of a conditional sentence order on a breach. However, in the circumstances of this case, I am not prepared to collapse the conditional sentence order completely because that would have serious consequences, firstly, for the re-payment of the outstanding debt, for the family of Mr. Goodman who might lose their home, and, of course, for the co-offender, who is not before this Court in breach of the conditional sentence order.

[16] However, this Court treats breaches of conditional sentence orders very seriously. If the public is going to have any confidence in conditional sentence orders, breaches must be appropriately denounced. Thus, I am going to suspend Mr. Goodman's conditional sentence order and direct that Mr. Goodman serve 15 days

on each breach to be served consecutively and that he commence serving the entire sentence, then, of 30 days immediately. When Mr. Goodman is released from custody, the conditional sentence order will resume.

[17] Is there anything further, counsel?

[18] MS. SUTHERLAND: Just one point, Your Lordship. Considering that he is going to be in jail for a period of time, I would ask the Court to address the condition 18 where he's required to make monthly payments of \$1,111.39 to Yukon Housing Corporation. In terms of when he's released, I would ask that he be given at least two months in terms of not having to make --

[19] THE COURT: Well, I guess I would first like to know, has the December payment been made?

[20] THE ACCUSED: No.

[21] THE COURT: What's the date you make the payment?

[22] THE ACCUSED: Twenty-second.

[23] MS. SUTHERLAND: The November payment, in my understanding, has been made.

[24] THE COURT: Well, what's your view on that, Mr. McWhinnie? I mean, the one option is to say that he makes the two payments on January 22nd. I do not think he is going to be losing any income. Quite frankly, his two businesses can operate without him.

[25] MR. MCWHINNIE: Given the nature of the underlying offence, My Lord, where the money was used to finance one of the businesses, the idea that he may not be able to make the payment personally on the 22nd of December might justify a deferral into January, but I wouldn't be able to agree or endorse a longer adjournment than that. The businesses are going concerns.

[26] THE COURT: Did you have anything further on that, then, Ms. Sutherland?

[27] MS. SUTHERLAND: Just in terms of the pressure, which has obviously been driving Mr. Goodman throughout this; that's my concern. So two months, in my submission, just gives him that little bit of leeway, it's not that he's not going to be required to make these payments eventually, but just giving him that two months clearance.

[28] THE COURT: You are asking that the payment for December not be required?

[29] MS. SUTHERLAND: And for January, too, that's what I'm asking.

[30] THE COURT: Thank you. Well, given that Mr. Goodman is going to be in jail on December 22nd, I am going to make an order that the payment for December be deferred, but on January 22nd, 2006, payment for that month and for the month of December will be required.

VEALE J.