

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

WAYNE WENDELL JACKSON

Appearances:
Joanna Phillips
Kelly Labine

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] COZENS T.C.J. (Oral): Wayne Jackson has entered guilty pleas to having committed the offence of theft under \$5,000 contrary to s. 334, and the offence of obstructing justice by giving a false name contrary to s. 129(a) of the *Criminal Code*.

[2] The Agreed Statement of Facts filed in the sentencing hearing reads as follows:

1. On September 2nd, 2015 at approximately 1930 hours, Whitehorse Royal Canadian Mounted Police (RCMP) received a report of a theft from Canadian Tire and the male was detained by staff.
2. RCMP attended and located a male being detained by staff, he identified himself as Phillip McLeod. He was arrested, Chartered and warned and escorted to the police vehicle, where he was searched.

3. The search resulted in a wallet being located with the identification in the name of Wayne JACKSON (“JACKSON”) that matched the accused's description. Also located on his person were several items that looked to be new including a DVD remote control, socks and other small items.
4. RCMP spoke with the manager of Canadian Tire who explained that he had been alerted to an empty DVD box in the electronics aisle and to an individual walking away that appeared to be hiding something in his jacket.
5. When this male tried to leave the store, he was confronted by an employee. The male got agitated and employees were able to get some of the merchandise from the male's jacket.
6. The manager remembered the male from a few years ago when he had walked out of the store with DeWalt power tools.
7. The total amount of goods stolen were approximately \$154.00, the items were recovered.
8. JACKSON was released on parole from Matsqui Federal Institution on August 27, 2015, his warrant expiry was February 7, 2016.

[3] Mr. Jackson is 49 years old, has an extensive criminal history for similar offences commencing in 1983, with convictions as follows:

1. theft, 68;
2. attempt theft, one;
3. possession of stolen property, nine;
4. take auto without consent, one;
5. mischief, one;

6. break and enter, four;
7. forgery and other forged document, four;
8. false pretences, one;
9. possession of credit card, five;
10. fraud, two;
11. obstruction of justice, six;
12. assault, one;
13. assault with a weapon, two;
14. carry concealed weapon, one;
15. possession of prohibited weapon, one;
16. possession of firearm contrary to order, two;
17. possession of restricted drugs and narcotics, six;
18. trafficking, three;
19. fail to attend Court; seven;
20. fail to comply with probation order, six;
21. fail to comply with undertakings to police officers or judicial officer or recognizances, three, and

22. unlawfully at large, one.

A total of 136 convictions, as I count it.

[4] Crown counsel submits that an appropriate disposition would be one year custody, noting in particular Mr. Jackson's criminal record. Counsel submits that the protection of the public is the primary sentencing objective.

[5] Defence counsel submits that Mr. Jackson should receive a three-month sentence. Such a sentence would allow him to be out of custody in time to attend the Jackson Lake treatment camp that commences May 11, 2016.

[6] Counsel notes that Mr. Jackson has pre-sentence time in custody on remand since February 7th. His time in custody since his arrest in September 2015 until February 7, 2016 was otherwise a result of the revocation of his parole status. Counsel have agreed this is a total of 10 days as of today's date.

CASELAW

[7] Three sentencing decisions of the Yukon Territorial Court regarding Mr. Jackson were filed by Crown counsel.

[8] In *R. v. Jackson*, 2013 YKTC 41, Ruddy J. sentenced him on three counts of theft and two counts of possession of a firearm in contravention of a prohibition order. One theft was in regard to taking meat from Superstore. The other two were thefts of handguns on two occasions from Sportslodge.

[9] Ruddy J. noted Mr. Jackson's Aboriginal heritage, his traumatic background and his substance abuse issues in agreeing to a joint submission for 18-month consecutive sentences for the two handgun thefts, one year concurrent for the possession charges, and six months concurrent for the theft from Superstore. With six months credit for time served, Mr. Jackson had 30 months left to serve.

[10] In *R. v. Jackson*, 2011 YKTC 78, Ruddy J. sentenced Mr. Jackson on four counts of theft. These were in the nature of shoplifting offences on five occasions from four different retail outlets. Mr. Jackson was noted to have been committing these offences in order to support his drug addiction.

[11] Ruddy J. commented on Mr. Jackson's Aboriginal heritage and some of the positives in his life at that time arising from his engagement in counselling while incarcerated at Whitehorse Correctional Centre (WCC) awaiting sentence. She also referred to Mr. Jackson as being a chronic and nuisance offender who simply continues to do the same thing over and over again, in stating that the paramount sentencing consideration was the protection of the public. She further stated in para. 7 that:

... Perhaps -- there is always that remote hope that he will see the error of his ways over the next few months and change his behaviour, although one would have to say that that hope is remote at best.

[12] Ruddy J. sentenced Mr. Jackson to 15 months custody concurrent on each count.

[13] In *R. v. Jackson*, 2011 YKTC 14, I sentenced Mr. Jackson on two charges of theft. These offences involved four separate instances of shoplifting from two different retail outlets.

[14] When the 2011 matter first came before me for sentencing, Crown counsel submitted that Mr. Jackson fell into the category of an incorrigible offender and that the paramount sentencing objective was the protection of the public. However, after considering the submissions of defence counsel in regard to the potential prospect for Mr. Jackson's rehabilitation, counsel submitted that a sentence on the low end of the 12 to 15 months originally suggested would be appropriate.

[15] Defence counsel sought a sentence in the six to eight month range.

[16] Subsequently, after an adjournment to consider the application of the *Truth in Sentencing Act*, S.C. 2009, c. 29 and Mr. Jackson's time in custody on remand, counsel came before me with a joint submission for nine months custody concurrent on each count.

[17] I considered Mr. Jackson's Aboriginal ancestry and reviewed in some detail the circumstances of his life, which included living in foster homes, substance abuse, physical abuse between his father and mother, and sexual abuse that he suffered as a child while in foster care. I noted his substance abuse issues and the programming that Mr. Jackson had taken while in custody at WCC awaiting sentencing in addition to three prior occasions when Mr. Jackson had been involved in residential treatment. I noted that Mr. Jackson claimed to have some insight into his offending behaviour.

[18] I concluded that the separation of Mr. Jackson from society was necessary in order to protect the public. While finding that Mr. Jackson fell into the category of an incorrigible offender, I stated that he, nonetheless, had the potential and capacity to change his life course and that he may well have recently embarked on the first steps of such a journey as noted in para. 11.

[19] In acceding to the joint submission, I acknowledged that the sentence must recognize the potential for Mr. Jackson's rehabilitation.

[20] Crown counsel also filed *R. v. Moore*, (1991), 4 B.C.A.C. 89 in which the Court of Appeal upheld the sentence of two years for a 55-year-old incorrigible offender on a conviction of the theft of a purse from a car after breaking the window.

[21] The offender had in excess of 50 convictions for similar kinds of offences.

[22] In para. 10, the Court stated that:

It may well be that a shorter sentence in this case could not be said to have been an unfit sentence but where the offender is an incorrigible offender and where protection of the public is a dominant sentencing principle it is not necessary that the shortest sentence which can reasonably be imposed should be imposed. That is to deny the very existence of the need for protection of the public.

[23] The Crown also filed *R. v. Gibbs*, 2007 BCCA 241, an appeal of a sentence for an offender on three counts of theft, two of which the Crown had proceeded on by indictment. The sentence imposed and upheld on appeal was one year concurrent for two of the thefts, and six months concurrent on the remaining count. The appeal was allowed in respect of the credit the offender should receive for his time in custody on remand.

[24] The rationale in *Moore* with respect to the sentencing of incorrigible offenders was referred to favourably in the *Gibbs* decision. Mr. Gibbs had 60 prior convictions, 37 of which were for theft.

[25] Counsel for Mr. Jackson filed a number of cases.

[26] *R. v. Meatface*, 1999 ABQB 797 was a sentence appeal in which Mr. Meatface had pled guilty to two counts of theft for shoplifting two bottles of mouthwash valued at \$10.84. He had over 60 prior convictions, many of which were for theft. He was sentenced to two six-month concurrent conditional sentences.

[27] Also considered in the same case was the appeal of a Mr. Wiebe, who had been sentenced originally to three months imprisonment on a charge of transportation and

fraud in the amount of \$13.20. He had in excess of 30 convictions, many of which were for break and enter or theft.

[28] The Court reviewed the principles of sentencing at length, considering in particular the extent to which an offender's prior criminal record should impact upon a sentence for a subsequent offence and the appropriateness of custodial dispositions for minor property offences. The Court found both sentences demonstrably unfit, stating that, for minority property crimes such as these, prison sentences should not be considered in the absence of serious aggravating factors.

[36] ... With respect to both Wiebe and Meatface, the only aggravating factors were their prior criminal records. However, a person ought not to be re-punished for past crimes, even if that person has proven himself to be incorrigible. Here, the records of Wiebe and Meatface are not, without more, reason to impose prison sentences, conditional or otherwise. A person should not be sent to prison over a nuisance offence. ...

[29] Mr. Wiebe's sentence had been served in full, however, so his appeal was dismissed. Mr. Meatface's sentence was varied to time served.

[30] In *R. v. Poitras*, 2006 BCCA 487, a sentence of nine months for theft of a shirt from a retail store was reduced to 90 days on appeal. The Aboriginal offender had approximately 36 prior convictions, primarily for offences of theft. The Court held that the trial judge had not properly considered the application of s. 718.2(e). The Court further stated in para. 12 that:

While I agree with the Crown and sentencing judge that the protection of the public is very important, I am also of the view that the offence here did not justify a nine-month sentence, even given Ms. Poitras's record. The "revolving door" phenomenon points up the need for treatment alternatives rather than punishment or warehousing of addicted offenders. ...

[31] In *R. v. Whitemanleft*, 2000 ABPC 68, the Court considered how to treat the criminal record of an offender being sentenced on guilty pleas to two counts of theft of merchandise from retailers and one count of possession of stolen prescription forms.

[32] There was a joint submission for three months custody. The Aboriginal offender had a lengthy criminal record, with many related convictions. In para. 10, Fraser J. stated as follows:

From these cases, it appears to me I must bear in mind not to use the accused's record to punish him for past crimes but as an indicator of whether he will commit future crimes and as an indication of the magnitude of the possible risk to the public and the need for segregation to minimize that risk, keeping in mind protection of the public is one of the key objectives of sentencing. However I cannot keep him segregated forever, and the punishment must fit the seriousness of the crime and not more unless there is an overriding reason like dangerousness. The sentence must always relate to the gravity of the offence.

PERSONAL CIRCUMSTANCES OF MR. JACKSON

[33] A formalized *Gladue* Report (the "Report") was prepared for Mr. Jackson's sentencing. This report provided background information regarding First Nations peoples of the Yukon and, in particular, First Nations peoples in the Champagne and Aishihik First Nations and the impact of the construction of the Alaska Highway and the residential school system.

[34] With respect to Mr. Jackson's personal circumstances, he is a 49-year-old member of the Champagne and Aishihik First Nations. His father is Caucasian. He is the youngest of 11 children. Both his parents are deceased.

[35] Mr. Jackson provided the author of the Report with a lengthy recollection of his memories of his life, which was unusual. The Report's author incorporated in full, with editing changes only, these memories into the Report. I find this recollection to be very helpful and informative.

[36] Certainly there was much in the way of trauma and dysfunction in Mr. Jackson's childhood. This included him being subjected to physical abuse and the deprivation of the necessities of life at times.

[37] He lived in places that he felt safe and then, without explanation, would be moved to places where he did not feel safe. He had no sense that he belonged to any family, first meeting his sister when he was 10. He lived in group homes and was seriously sexually abused while in the care of one group home. When he finally told the supervisor about the abuse, he was not believed:

Instead I was yelled at, strapped, grounded, told I was lying and given extra chores. I was told that I should be grateful that Jacques, [*the abuser*] cared enough about me to take me to his house.

[38] He was subjected to racism and bullying. He stated that he learned to "numb out the pain and emotions". He further stated that he felt shame and:

...thought I was ugly, useless, weak and helpless. I began to believe that I was just a dumb stupid indian that my mom and dad didn't want. I had no self-esteem, trouble concentrating, poor sleep, feelings of confusion and anger. The heaviest one to carry was shame. I was ashamed of who I was. I bottled up my emotions and feelings and started to distrust people in authority. ...

[39] Mr. Jackson ended up abusing alcohol and drugs. He became HIV positive.

[40] Mr. Jackson states that he began to see a residential school counsellor in 2012 who has helped him understand that the abuse he endured as a child was not his fault. He has begun to feel more positive about himself and less apprehensive. Speaking about his childhood, he is able to start using the tools he has learned through this counsellor. He was engaged in counselling while serving his 30-month sentence in Abbotsford. He believes that he has begun his healing journey and has gained more insight into himself and his behaviour. He believes that he can work with his support

team to make progress on his healing journey. He states that he is very positive about his future and what it has to offer him.

[41] The Report notes that the Parole Board of Canada records that Mr. Jackson successfully completed a number of programs, including an Aboriginal-focused substance abuse treatment program, an Intake Multi-Target Primer, an Aboriginal integrated correctional program model and two drug and alcohol programs at Tsow-Tun Le Lum.

[42] It was noted that Mr. Jackson made significant gains in addressing risk factors, and was fully engaged in his correctional plan. He worked closely with the institutional Elder and Aboriginal liaison officer, graduated from a Spiritual Warriors program, and he participated daily in spiritual practices.

[43] The Report states "Those working with Mr. Jackson reported positive gains and that he presented as highly motivated to change his life."

[44] He also participated in Aboriginal healing circles. The report from the Tsow-Tun Le Lum Society indicated that Mr. Jackson actively participated in all aspects of the program, and that he maintained a positive and determined attitude throughout.

[45] Mr. Jackson has also completed the peer relationship program and the Making Real Change in My Life program, where he was reported as having done very well and demonstrated a high level of participation. Andy Nieman stated that he would be pleased to continue working with Mr. Jackson if he is accepted into the Jackson Lake treatment program.

[46] The Report states that the following programs are available to Mr. Jackson when he is released from WCC:

- Community Wellness department located in Haines Junction;
- Maury Fraser - Community Wellness Worker based in Whitehorse;

- Case Management team consisting of Maury Fraser, Lisa Rawlings-Bird from Champagne Aishihik First Nation Whitehorse office, and Miles Morton, the Champagne Aishihik Justice Coordinator, to connect with Men's Circles in Haines Junction;
- Johnny Brass of the Kwanlin Dun First Nation Jackson Lake Program, to complete the application process for the May 11th men's program, and Joe Migwans from the Kwanlin Dun First Nation Jackson Lake Program who will assist with cultural counselling and Men's Circles in Whitehorse.

[47] Blood Ties will be also of assistance. There will be appointments with the residential school counsellor, Mark Kelly, and there will be access to drug and alcohol services.

[48] Steps have been taken to secure stable housing for Mr. Jackson through Yukon Housing and the Blood Ties housing navigator. Steps have also been taken towards attendance at Yukon College.

[49] Mr. Jackson has completed his residential school claim and is awaiting a decision. He indicates that completing this claim has allowed him to let it go and to forgive his abuser, which he says has had a profound effect upon him and his thinking.

[50] I do not intend to review at length the considerations that are involved in determining a fit sentence for an Aboriginal offender. I have done so recently in considerable detail in *R. v. Quock*, 2015 YKTC 32.

ANALYSIS

[51] As I stated in para. 112 of *Quock*, referring to *R. v. Ipeelee*:

[112] It is important to consider the purpose behind s. 718.2(e). In *Ipeelee*, the Court stated in paras 58, 60 and 75:

[59] The Court held, therefore, that s. 718.2(e) of the Code is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal

people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing (*Gladue*, at para. 93). It does more than affirm existing principles of sentencing; it calls upon judges to use a different method of analysis in determining a fit sentence for Aboriginal offenders. Section 718.2(e) directs sentencing judges to pay particular attention to the circumstances of Aboriginal offenders because those circumstances are unique and different from those of non-Aboriginal offenders (*Gladue*, at para. 37). When sentencing an Aboriginal offender, a judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (*Gladue*, at para. 66). Judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally, but additional case-specific information will have to come from counsel and from the pre-sentence report (*Gladue*, at paras. 83-84).

[60] Courts have, at times, been hesitant to take judicial notice of the systemic and background factors affecting Aboriginal people in Canadian society (see, e.g., *R. v. Laliberte*, 2000 SKCA 27, 189 Sask. R. 190). To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples. These matters, on their own, do not necessarily justify a different sentence for Aboriginal offenders. Rather, they provide the necessary *context* for understanding and evaluating the case-specific information presented by counsel.

...

[75] Section 718.2(e) does not create a race-based discount on sentencing. The provision does not ask courts to remedy the overrepresentation of Aboriginal people in

prisons by artificially reducing incarceration rates. Rather, sentencing judges are required to pay particular attention to the circumstances of Aboriginal offenders in order to endeavour to achieve a truly fit and proper sentence in any particular case. This has been, and continues to be, the fundamental duty of a sentencing judge. *Gladue* is entirely consistent with the requirement that sentencing judges engage in an individualized assessment of all of the relevant factors and circumstances, including the status and life experiences, of the person standing before them. *Gladue* affirms this requirement and recognizes that, up to this point, Canadian courts have failed to take into account the unique circumstances of Aboriginal offenders that bear on the sentencing process. Section 718.2(e) is intended to remedy this failure by directing judges to craft sentences in a manner that is meaningful to Aboriginal peoples. Neglecting this duty would not be faithful to the core requirement of the sentencing process.

[52] Mr. Jackson presents as a somewhat complex individual for the purposes of determining a fit sentence. He is clearly within that category of offenders that could be described as incorrigible.

[53] He is somewhat distinguishable, however, within that category, as he appears to be motivated to change his behaviour and follows through with counselling and programming in which he appears to be very involved and successful in completing. Then, however, he is released from custody and almost immediately goes out and commits further offences. It is as though he deliberately sabotages himself by choosing to throw away everything positive he has accomplished without even a perfunctory attempt to try to put into action outside the prison walls what he has so apparently successfully learned within them.

[54] He is not an individual who has never had the opportunity or never previously expressed a willingness to take programming and treatment, who has now changed their position in this regard. For such individuals, the prospect of engaging in

programming and treatment offers at least a reasonable hope that this new path may assist in their rehabilitative efforts and result in a positive change in lifestyle.

[55] Mr. Jackson has done all this, and yet has not shown any alteration in his criminal lifestyle once he is out of custody and in the general public away from a closely structured environment. He has repeatedly chosen to pursue a criminal lifestyle whenever he has been in a position to choose.

[56] I can understand the argument that the prospects for rehabilitation of Mr. Jackson are a long shot at best, and that the separation of Mr. Jackson from society for protection of the public from his criminal acts should be the focus of this sentencing. To a large extent, this has been the focus of the recent sentencing decisions of Ruddy J. and myself in regard to Mr. Jackson.

[57] However, the protection of the public involves both short-term and long-term considerations. Repeatedly sending Mr. Jackson back to jail appears to be doing little, if anything, for the long-term protection of the public. He needs to be able to put into practice what he has learned in custody out in the real world. If he is able to do so, then the protection of the public is best served.

[58] I say this in regard to Mr. Jackson while keeping at the forefront of my thinking the nature of the crimes for which he is being sentenced. There is nothing particularly aggravating in the circumstances of these offences. In and of themselves, they do not warrant lengthy custodial dispositions. The theft is distinguishable from those before Ruddy J. in 2013 when handguns were involved; a particularly aggravating feature.

[59] Mr. Jackson's criminal record is certainly a consideration. As Fraser J. stated, while not a factor for which Mr. Jackson should again be punished, it certainly allows for an assessment of his future risk for reoffending and for the imposition of a sentence that attempts to address that risk in accord with the purposes, objectives, and principles of sentencing.

[60] The obstruction of justice charge differs somewhat from the theft charge in that this is the type of offence that compromises the ability of police officers to investigate

crimes. It is not at all unusual for custodial dispositions to be imposed for such offences.

[61] When I consider Mr. Jackson's current circumstances in light of his past performance, including not only the negative aspects of his past, such as his criminal record, but his past and present participation in treatment and programming and immediate future prospects he has for re-engagement in the community with an identified support team, I am satisfied that it is appropriate to impose a sentence that allows Mr. Jackson to pursue counselling and treatment outside of a custodial facility.

[62] I say this recognizing that I am not dealing with offences of personal violence in which there is a substantial risk of serious physical harm in the event that Mr. Jackson reoffends. I say this recognizing that he has committed several offences of violence in the past, at least some of which were in the context of committing a theft, in particular, those for which he was sentenced by Faulkner J. in 2003. His last conviction for an offence of violence was in 2006.

[63] I am prepared to provide Mr. Jackson a further opportunity to try to lead a successful life in the community. He has a strong support team in place that will, I believe, hold him accountable to the reasonable expectations which he will be required to work towards achieving the plan that is put forward for him. If Mr. Jackson reoffends, the harm caused will not likely be significant.

[64] I am not saying that offences of theft in the shoplifting category are insignificant. Even in such offences, there is, besides the cost to society, potential for violence if efforts are made to stop the theft from occurring. However, unless I am prepared to declare Mr. Jackson incorrigible beyond any hope of redemption, I must consider any option other than custody that is reasonable in the circumstances in determining a fit sentence. This accords with the requirements set out in s. 718.2(e), as long as there is a proper consideration of all the remaining purposes, objectives, and principles of sentencing.

[65] Again, as I have stated in *Quock*, in *R. v. Charlie*, 2014 YKTC 17, in *R. v. Quash*, 2009 YKTC 54 and several other cases when dealing with Aboriginal offenders in particular, efforts need to be made to take advantage of all reasonable options that are presented for the offenders that involve the offender's community as part of the solution and hold the offender accountable to his or her community.

[66] A recognition of the over-representation of Aboriginal offenders incarcerated in prisons, and a recognition of the harm governmental policies such as the residential school system have caused to Aboriginal peoples, requires action to be taken to attempt to redress that harm. Where there are reasonable sentencing options available that offer hope to breaking the cycle of destruction and criminality in an offender's life, those options should be given fair consideration and chosen where possible.

[67] Obviously, the greater the risk of serious and significant harm to victims that an offender poses, the less available or appropriate some of these options may be, and custody may be the only reasonable option available.

[68] In Mr. Jackson's case, I find that the risk of serious and significant harm is not great and there is enough merit in the plan put forward and the commitment of Mr. Jackson's support team as well as sufficient motivation on his part to seek to pursue treatment or programming to take that risk.

[69] I am not saying that I am confident that Mr. Jackson will be successful in trying to live a pro-social and non-criminal life. I am not. I am, however, equally not confident in saying that he has no hope of rehabilitation. As long as there remains that hope and the risk remains as it is, I am satisfied that sentences that either avoid incarceration or limit it should, where possible, be imposed. Every case will depend on its own circumstances, however.

[70] The sentence will be as follows.

[71] With respect to the s. 334 charge, taking into account and giving credit for 15 days pre-trial custody, there will be a further 85 days. As it is most likely that Mr.

Jackson will be released after less than 60 days, he will be out of custody in sufficient time to prepare for and attend at the Jackson Lake treatment program.

[72] For the s. 129 offence, there will be a consecutive conditional sentence of 45 days. The terms of the conditional sentence will be as follows. You will:

1. Keep the peace and be of good behaviour.
2. Appear before the Court when required to do so by the court.
3. Report to a Supervisor immediately upon your release from custody and thereafter, when required by the Supervisor and in the manner directed by the Supervisor.
4. Remain within the Yukon unless you have written permission from your Supervisor.
5. Notify the Supervisor, in advance, of any change of name or address, and promptly, of any change of employment or occupation.
6. Reside as approved by your Supervisor, abide by the rules of the residence and do not change that residence without the prior written permission of your Supervisor.
7. For these 45 days of this order, you are to remain inside your residence or on your property, except with the prior written permission of your Supervisor, except in the immediate company of a member of your support team as identified to Supervisor or another individual approved in writing in advance by your Supervisor.

8. Answer the door or the telephone to ensure you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition.

[73] This, of course, while providing you with some structure and support, Mr. Jackson, will also allow you the opportunity to engage in pro-social activities in the community and lessen your opportunities to slip back into the criminal lifestyle which you so quickly seem to do when you have restraints lifted from you.

[74] So the restrictions are intended to reflect the fact that this is a jail sentence, but more so to actually assist you in your rehabilitative path, as the less time you have on your own in the community, the more likely it is you are going to be able to maintain yourself in a pro-social lifestyle and you will be able to get out when it is beneficial for you to do so.

[75] You are to:

9. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor.
10. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub or lounge or nightclub.
11. Attend and actively participate in all assessment and counselling programs as directed by your Supervisor, and complete them to the satisfaction of your Supervisor for the following issues:

substance abuse;

alcohol abuse;

psychological issues, and

any other issues identified by your supervisor.

and provide consents to release information to your Supervisor regarding your participation in any program you have been directed to do pursuant to this condition.

12. Participate in such educational or life skills programming as directed by your Supervisor and provide your Supervisor with consents to release information in relation to your participation in any programs you have been directed to do pursuant to this condition.
13. You will attend at the Jackson Lake treatment program commencing May 11, 2016 and complete that treatment program unless otherwise directed by your Supervisor.

[76] So if something comes up that makes it impossible, the Supervisor can direct it.

[77] Those are all the terms I intend to put on the Conditional Sentence Order.

[78] Attached to both the obstruction of justice charge and the theft charge, there will be a period of probation. This period of probation will be for a period of 15 months.

[79] It will require you to:

1. Keep the peace and be of good behaviour.
2. Appear before the court when required to do so by the court.
3. Notify the Probation Officer, in advance, of any change of name or address, and promptly, of any change in employment or occupation.
4. Remain within the Yukon unless you obtain written permission from your Probation Officer or the court.
5. Report to a Probation Officer immediately upon completion of your conditional sentence, and thereafter, when and in the manner directed by the Probation Officer.
6. Reside as approved by your Probation Officer, abide by the rules of the residence and not change that residence without the prior written permission of your Probation Officer.
7. For the first four (4) months of this order, abide by a curfew by being inside your residence between 11:00 p.m. and 6:00 a.m. daily except with the prior written permission of your Probation Officer, except in the actual presence of a member of your support team as identified to your Probation Officer or another responsible adult approved in advance by your Probation Officer. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition.

[80] Again, the curfew is there only to provide a transition of stability. It is a later curfew, and obviously exceptions can be given in those circumstances that are considered appropriate or, otherwise, this term can be altered upon a review before me if it is considered appropriate to do so.

[81] What is your commitment to abstaining from alcohol and drugs, Mr. Jackson?

[82] MR. JACKSON: Pardon me?

[83] THE COURT: What is your commitment to abstaining from alcohol and drugs?

[84] MR. JACKSON: I've been clean for 37 months, with two slips, so my commitment is pretty strong.

[85] THE COURT: You can follow through on this on your Probation Order; right?

[86] MR. JACKSON: I can.

[87] THE COURT: If you do not, you will be back before the Court in all likelihood on charges other than breaches of probation, in any event.

[88] MR. JACKSON: I understand that.

[89] You will:

8. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor.
9. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales bar, pub, tavern, lounge, or nightclub.

[90] Again, those terms are not meant to be restrictive. They are meant to be protective, frankly. You cannot drink or your life will unravel; and you cannot use drugs or your life will unravel.

[91] Further, you will:

10. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues:

substance abuse;

alcohol abuse;

psychological issues;

any other issues identified by your Probation Officer;

and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition.

11. Participate in such educational or life skills programming as directed by your Probation Officer and provide your Probation Officer with consents to release information in relation to your participation in any programs you have been directed to do pursuant to this condition.

[92] There is one other condition I meant to put in the Conditional Sentence Order. I will put in that and I will put it in this Probation Order; you are to:

12. Meet with at least one member of your support team as identified in writing to your Conditional Sentence Supervisor or Probation Officer, (as the case may be) at least one time per week unless otherwise directed by your supervisor or Probation Officer.

[93] You are going to identify your treatment team members, your support team members, to your Probation Officer or Conditional Sentence Supervisor, and you will ensure that you meet with them, and then attached to that term will also be that you are to provide information to your Supervisor or Probation Officer in regard to who you met with, where you met and when you met. That will be at least once a week. Frankly, I expect you will meet more than that if you want to be successful.

[94] Those are all the terms that I intend to put on the Probation Order.

[95] There are fine surcharges. They are a total of \$400 payable forthwith. Those will be noted as being payable forthwith. You will be noted in default. There will be a warrant of committal issue that you serve your default time concurrent to the time you have remaining to serve on your sentence.

[96] There will be a stay of proceedings on the remaining count.

[97] Mr. Jackson, it is really up to you to follow through on all that you have learned and all you say you want to do, and actually do it, and not just decide to do something because that is what you may happen to feel like doing at the moment.

[98] I do not understand why, after everything that you took in the federal system and all your success in all that programming why you re-offend right afterwards, but I do not expect to understand. I have not lived your life.

[99] But the reality is that while I cannot explain it or pretend to understand it, you have to find a way to deal with it so that does not continue to mark your life as it has in the past. You have individuals here supporting you. You have a support team. You have to actually make that decision in your own mind that your life will not be governed by what you feel like doing at the moment, but you will allow it to be led by those people who have decided to align themselves with you to help you at this time in your life.

[100] You have had a very unsuccessful life in many ways to this point in time marked by all your time in custody. That is something only you can change. You cannot do it on your own, however, not at this point. So I wish you the best in that regard.

COZENS T.C.J.