

Citation: *R. v. Jansons*, 2008 YKTC 25

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Docket: T.C. 97-01292
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
Keith Parkkari

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): This is a case which has been before the court for an extremely long period of time, now approaching a period roughly equal to the proverbial Dickensian Chancery suit. The actual history of the matter really goes back even before the present charges.

[2] In 1994, Juris Albert Jansons was found guilty on charges of impaired driving and refusing to comply with a demand to provide breath samples. Owing to his prior record, which included five prior convictions for drinking and driving, Mr. Jansons was sentenced to 18 months imprisonment and prohibited from driving for three years.

[3] Despite the custodial sentence and the driving prohibition, Mr. Jansons was again caught driving drunk in 1996. He was convicted of impaired driving and driving while disqualified. On this occasion, he received 90 days on the driving while disqualified charge but was granted a curative discharge on the impaired count. He was made subject to a probation order for three years, and again prohibited from driving.

[4] Despite the discharge, the probation order and the prohibition order, Mr. Jansons again was found operating a motor vehicle whilst impaired in October of 1997. He ultimately entered a guilty plea to a charge under s. 253(b) of the *Code*. His readings had been 170 and 180 milligrams percent. The matter was adjourned from time to time, as Mr. Jansons wished to again apply for a discharge. Ultimately, the matter was set for disposition in Faro on September 18, 1998, at which time Mr. Jansons failed to appear. It turned out that he had fled the jurisdiction and moved to British Columbia.

[5] Despite the fact that a warrant was issued for his arrest, and despite the fact that Mr. Jansons had several contacts with police in British Columbia during the following years, it was not until 2006 that Mr. Jansons was arrested on the Yukon warrant. It must be noted that Mr. Jansons' whereabouts had been known to the police since early in 2000 but they took no steps to return him on the warrant until 2006.

[6] Since Mr. Jansons' arrest in 2006, matters have continued to proceed slowly. First, Mr. Jansons brought an application for a stay, putting forward the

somewhat remarkable thesis that he had not been tried in a reasonable time, despite the fact that he had absconded from justice. That application was dismissed. The matter continued to drag as Mr. Jansons sought adjournments for various reasons, primarily because of alleged medical concerns. Ultimately, with further adjournments refused, Mr. Jansons again failed to appear for disposition.

[7] He was arrested on the 9th of February of 2008 in British Columbia, remanded in custody and returned to the Yukon, where, on February 15, 2008, the matter finally proceeded to disposition on the over 80 charge, as well as additional charges of failing to appear and breach of the probation order, which had been made part of the curative discharge. Perhaps fearing that matters might at last be proceeding with dispatch, I adjourned my decision until February 20th.

[8] I should also pause to note that the Crown has served notice of intention to seek greater punishment. Consequently, the minimum sentence that could be imposed is one of 90 days imprisonment.

[9] This case presents a most interesting sentencing dilemma. Mr. Jansons is a serial drunk driver, now with nine prior convictions. *R. v. Donnessey*, [1995] Y.J. No. 5 from our Court of Appeal, makes it clear that such persons are to receive substantial sentences. It is beyond argument that had the matter proceeded to disposition in 1998, and had Mr. Jansons not succeeded in receiving yet another discharge, (more than a remote possibility) he would have received a sentence of imprisonment in the range of two years.

[10] The Crown argues with impeccable logic that Mr. Jansons should not be rewarded for absconding: doing so would encourage those facing incarceration to flee, and thus be inimical to the due administration of justice. On the other hand is this: prior to 1998, Mr. Jansons was racking up driving while intoxicated convictions at an alarming rate, virtually on an annual basis. Since then, he has had only one rather minor brush with the law, an uttering threats conviction that netted him a \$500 fine. He has not, rather miraculously, in my view, been again found driving while drunk.

[11] It further appears that since he left the Yukon, he has been steadily employed as an electrician, having worked at the Kemess Mine in British Columbia since 1998, and has continued to support his wife and two children. He claims to have been entirely abstinent since 2006.

[12] Consequently, the Court's dilemma. *Donnessey* is clear, but it is also clear that the situation now is not what it was in 1998. Just as *Donnessey* is clear, the case law is also clear that the accused's post offence conduct is a relevant consideration in sentencing. If the Court imposes a sentence it would have imposed in 1998, general deterrence will certainly be served, as will the principle that the absconder should not benefit. On the other hand, if Mr. Jansons receives that sentence, he will undoubtedly lose his employment, and it is virtually certain that all of the progress that Mr. Jansons has made since that time will be lost and he will return to his old and dangerous ways. This is hardly in the public interest.

[13] Balancing the competing factors as best I can, and recognizing that this is a somewhat unique set of circumstances, I have decided to impose the following sentences. On the charge contrary to s. 253(b) of the *Criminal Code*, Mr. Jansons, you are sentenced to a period of 90 days in addition to time already served, which I calculate at 26 days. Following your release from imprisonment, you will be subject to a probation order for a period of two years. I will return to the terms of that order. You are prohibited from operating a motor vehicle on any street, highway or other public place in Canada for a period of three years. This was the maximum prohibition in effect at the time of the commission of the offence.

[14] On the charge of breach of probation, you are sentenced to a period of imprisonment for three months to be served consecutively. On the charge of failing to appear, three months consecutive to any other sentence. I pause to note that six months was the maximum sentence provided by law at the date of the offence for both of these offences. I will, however, allow these sentences on the failing to appear charge and the breach charge to be served conditionally, subject to the following terms:

1. Keep the peace and be of good behaviour;
2. Report within two working days to a conditional sentence supervisor and thereafter as directed;
3. Advise the conditional sentence supervisor in advance of any change of name or address, promptly notify him of any change of occupation or employment;

4. Remain within the jurisdiction, unless given permission by the conditional sentence supervisor to go outside of the Yukon;
5. Reside where directed by the conditional sentence supervisor;
6. Diligently seek and maintain employment;
7. Not possess or consume alcohol or controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
8. At your expense, you will undergo and provide the results of liver function testing to your conditional sentence supervisor as and when he requires;
9. Not attend at any place where alcohol is sold, except a restaurant which might be incidentally licensed for the sale of alcohol with meals;
10. Provide samples of your breath on demand if your conditional sentence supervisor or a peace officer who has reasonable grounds to believe that you have alcohol in your body, contrary to the terms of the conditional sentence order;
11. Take such alcohol assessment, treatment and counselling as directed;
12. Except in a case of emergency, you must remain within your residence, unless given permission from the conditional sentence supervisor to be outside of your residence for the purposes of employment, medical or counselling appointments, obtaining the necessities of life or otherwise as the conditional sentence supervisor will approve.

[15] The terms of the probation order will be that you:

1. Keep the peace and be of good behaviour;

2. Report to the Court as and when required;
3. Report to the probation officer within two working days and thereafter as, when and in the manner directed;
4. Advise the probation officer in advance of any change of name or address, and promptly notify him of any change of occupation or employment;
5. Not possess or consume any alcohol or controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
6. Take such alcohol assessment, treatment and counselling as directed;
7. Not attend at any place where alcohol is sold, except a restaurant which might be incidentally licensed for the sale of alcohol with meals.

[16] The Crown having proceeded by indictment on the s. 253(b) charge, there will be a surcharge of \$100. The surcharge with respect to the other two counts will be \$50. Obviously, the intent of this sentence, sir, is that you be able to return to British Columbia and return to your employment after you have served the actual custodial portion of the sentence. Mr. Parkkari will no doubt advise you of the provisions of s. 733 and s. 742(5), which provide that both the probation order and the conditional sentence order could be transferred to the province of British Columbia.

[17] Does he require time to pay the surcharges?

[18] MR. PARKKARI: Six months, please.

[19] THE COURT: Crown?

[20] MS. GRANDY: I have no submissions.

[21] THE CLERK: And the remaining charges, Your Honour.

[22] MS. GRANDY: If I could ask for the remaining two counts to be marked as withdrawn, please.

[23] THE COURT: Withdrawn on the request of the Crown. I will give him until the 30th of June to pay the surcharges.

[24] MR. PARKKARI: Thank you.

FAULKNER C.J.T.C.