

Citation: *R. v. John*, 2012 YKTC 73

Date: 20120810

Docket: 10-07207

11-00467C

11-00468

11-00468A

11-00468B

11-00593

11-06445A

Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Chief Judge Cozens

REGINA

v.

HAROLD ARTHUR JOHN

Appearances:

Terri Nguyen

Christine Badcock

Robert Dick

Counsel for the Crown

Agent for the Territorial Crown

Counsel for the Defence

**REASONS FOR SENTENCING**

[1] COZENS C.J.T.C. (Oral): Harold John has entered guilty pleas to a number of offences. Firstly, he entered guilty pleas to having committed two offences under s. 355 of the *Code* on September 19, 2011. He also entered two guilty pleas for s. 266 offences committed on September 23rd, and he entered guilty pleas for having committed s. 98(1)(b) and s. 354(1) offences on September 26, 2011. He further entered guilty pleas to two s. 145(3) charges arising from October 14th to 18th, and October 19th, 2011. He also entered guilty pleas to an offence under the Yukon *Motor*

*Vehicle Act*, RSY 2002, c. 153, s. 266, committed on January 8, 2011, and an offence under s. 5(1) of the *Yukon Motor Vehicle Act*, committed on April 18, 2011.

[2] The facts in relation to the *Criminal Code* offences are set out in an Agreed Statement of Facts that was read into the record:

The accused, Harold Arthur John, admits all of the following facts, without the necessity of the Crown calling evidence.

September 19, 2011 (Information 11-00467C)

1. On September 19th, 2011, Beaver Creek RCMP were dispatched to the White River Campgrounds (the "Campground"), south of Beaver Creek in the Yukon Territory. A male had been observed in a grossly intoxicated state. The owner became concerned for her safety and for the safety of others at the Campground. The male was identified as the co-accused on this information, Christopher Cornell ("Cornell"). When located, Cornell was grossly intoxicated and hitchhiking. He indicated to RCMP that he was headed home to Whitehorse.
2. RCMP transported Cornell south along the Alaska Highway to a location where he would be able to get a ride to Whitehorse without disturbing others at the Campground. While en route, RCMP observed a vehicle in the ditch. The Accused was located in the passenger seat of the vehicle, asleep. When asked whether he was okay, the Accused indicated that his friend "Bruce" had gone to Beaver Creek to get mechanical help and that "Bruce" should be back shortly.
3. Both Cornell and the Accused were then transported together further south on the Alaska Highway to hitchhike back to Whitehorse.
4. It was later determined that the truck where the Accused was located had been stolen from a location in Whitehorse. Inside of the stolen vehicle, RCMP located three (3) laptop computers that were stolen from the Backerei Restaurant at Haines Junction, Yukon the previous evening (September 18th, 2011).
5. The Accused, Harold JOHN was in possession of both the stolen vehicle and the stolen laptop computers. The value of the laptop computers was \$4400. Also missing from the Backerei Restaurant were two cash registers containing \$1300, which have not been located.
6. The Accused provided a statement to RCMP later in which he initially denied being in the vehicle. He then admitted to being in the vehicle, that

he was “high on dope” and does not remember how the vehicle ended up in the ditch, that he was picked up by Cornell in the vehicle.

7. Independent witnesses placed the Accused and Cornell together both at the Campground and just north of the Campground, where both were intoxicated and busy cleaning the stolen vehicle. Together the Accused and Cornell washed the vehicle down with vinegar, removing contents as they cleaned. They then reloaded the vehicle, including the duffle bag which contained the stolen laptop computers. They disposed of a number of documents belonging to the vehicle’s owner in the garbage bin at the Campground before leaving. Both men were described as “stoned” or “intoxicated” by the independent witnesses.
8. There is no report of damage to the stolen vehicle. The laptops have been recovered without damage and will be returned to their rightful owners.

September 23, 2011 (Information 11-00468)

9. On September 23, 2011 at 11:45 p.m. Dayna WEST attended the Ross River RCMP detachment and advised that she had just been assaulted by the Accused. Further investigation by Ross River, Yukon RCMP revealed the following:
10. There was a gathering at the residence of Amos DICK in Ross River. Among the persons present were Dayna WEST, Jade TUFFS, Pauline CHARLIE, and Dayna WEST’S infant daughter. TUFFS saw the Accused approaching the DICK residence along the road and wanted to leave. She was convinced to stay by CHARLIE.
11. The Accused entered the residence and on seeing TUFFS in the living room said “You fucking cunt, you slut, you’re making my wife like you.” He then hit TUFFS once on the side of the face. The Accused then asked “where is that cunt, where’s Dayna?” Someone in the residence told the Accused that WEST was in the bathroom.
12. At the time, WEST was helping to clean the residence and was in the bathroom. She came out of the bathroom on hearing the disturbance involving the Accused and TUFFS. When she came out, she was slapped in the face by the Accused.
13. WEST told the Accused to leave her alone and fell to the floor, attempting to block her head from any further blows. CHARLIE, who is the spouse of the Accused, attempted to pull the Accused away.
14. WEST suffered a small injury to her lip which is not permanent and healed quickly.

September 26th, 2011 (Information 11-00593)

15. As a result of the previous two incidents, described above, the Accused was until December 7th, 2011 bound by a recognizance which included a number of conditions. Those included abstaining from alcohol and drugs, not attending bars, not attending Whitehorse, Haines Junction or Beaver Creek, Yukon, and reporting to a bail supervisor.
16. On September 26, 2011 Joyia CHAKUNGAL called Whitehorse RCMP to report that at 2:15 a.m. that morning she was awoken by her dog. When she looked outside she saw a dark pickup truck speed away from her property. RCMP responded and Ms. CHAKUNGAL noticed that a 5 gallon, red, square jerry can of gasoline and a 6 gallon, red triangular jerry can of diesel fuel where [sic] missing from her property.
17. At 2:18 a.m. Marc CHOUINARD contacted Whitehorse RCMP to report that the Mendenhall Firehall and Community Centre had been broken into. Several items were taken including a generator and chainsaw. Mr. CHOUINARD was called by Spectrum Security in regards to a door alarm at the Firehall around 2:00 a.m. He went to the Firehall 15 minutes later and found a door. Dad's cookies in packages of two were taken from the location.
18. Later the same day, RCMP were investigating an attempted murder by firearm of Cpl. Kim MacKellar by Jessica Johnson and Christopher Cornell. During the course of that investigation, the Accused was located on the Alaska Highway, just north of Haines Junction, Yukon in a Suzuki Sidekick.
19. Queries were done on that vehicle, which was stolen. Subsequent investigation revealed the following.
20. The Suzuki Sidekick was registered to a Remi DIONNE. In 2010, Mr. DIONNE sold the vehicle to Rene ALLAIRE of Mendenhall. Mr. ALLAIRE had not yet registered the vehicle but had the bill of sale for it.
21. Mr. ALLAIRE advised RCMP that on September 25th, 2011 he had poached a deer. He put the deer in the Suzuki Sidekick and was able to describe that there were four quarters of deer meat with each quarter in a garbage bag. He returned from shooting the deer at 11:00 p.m. He left the deer, a blade for a skill saw and two weapons in the vehicle and went to bed. The keys for the Sidekick were left in that vehicle and the doors were open. He was parked at 45 Mendenhall. The residences and garages in that area were also broken into and the following items taken: a Bostitch air nailer, Makita planer, Maximum grinder and other tools.
22. The weapons were a .375 H&H Magnum rifle belonging to himself and a .22 calibre rifle that belonged to his brother. There was also a box of .375

shells in the glove box along with 2 or 3 spent shells which Mr. Allaire has reloaded.

23. Although Mr. Allaire was drunk for several days after he shot the deer, he believes that the Sidekick was stolen on the same day that the Firehall was broken into, being September 26th, 2011. He did not report the theft as the vehicle was not registered and contained weapons and a poached deer.
24. The .375 Magnum was later located on the Alaska Highway in the possession of Christopher Cornell. The weapon was involved in the attempted murder of Cpl. MacKellar.
25. The jerry cans, generator and chain saw were all thrown out of the vehicle that Cornell and Johnson were in during the shooting of Cpl. MacKellar. Dad's cookie wrappers were found in that same vehicle, a Chevrolet Blazer.
26. Given the connection of the Accused to Christopher CORNELL, Jessica JOHNSON, the stolen items and the shooting of Cpl. MacKellar, the Accused was questioned by Cpl. Nestor Baird, then of the Major Crimes Unit.
27. The Accused confessed as follows:
  - a. The Accused has known Christopher CORNELL for 10 years through gaol;
  - b. The Accused and Cornell were both arrested the week before for possession of a stolen vehicle near Beaver Creek, Yukon;
  - c. The Accused had recently been using heroin, cocaine and morphine;
  - d. On September 25th, 2011 Cornell, Johnson and the Accused all started out in Whitehorse, Yukon where Cornell picked the Accused up in a dark coloured SUV. Johnson was picked up next. The trio went to the Mendenhall area looking for gasoline as the vehicle was running low;
  - e. When they got to Mendenhall they found a vehicle (the Suzuki Sidekick) which had keys in it, two (2) rifles, a chainsaw, jerry cans, tools and some meat. They took more items from the garage of that same residence (45 Mendenhall). Those items were loaded into the vehicle. The Accused took the Sidekick and Cornell and Johnson took the SUV.
  - f. During the course of their evening the Accused argued with Johnson about drugs (heroin and cocaine) that she had. The Accused felt that Johnson was being "stingy" with the drugs.
  - g. Ultimately, the Accused drove to Haines Junction, Yukon with Cornell and Johnson following in the SUV. They met at the Fas

Gas service station where they filled up the vehicles with fuel from the jerry cans. The Accused wanted to continue on to Beaver Creek. However, Cornell and Johnson wanted to "score". The Accused argued with Cornell and Johnson and told them he was going on without them.

- h. Cornell removed the jerry cans, rifles, chainsaw, and tools from the Sidekick to the dark coloured SUV.
- i. The Accused began driving north on the Alaska Highway toward Beaver Creek. He was drowsy and pulled over to sleep. Shortly thereafter he was stopped and detained by a Conservation Officer who was involved in the investigation of the shooting of Cpl. MacKellar.

October 14 - 18, 2011 (Information 11-00468A)

- 28. On Friday, October 14, 2011, the Accused telephone [sic] his bail supervisor at about 5:00 p.m. He said he was headed to Watson Lake from Whitehorse and knew his conditions. He further said he would report to the bail supervisor on Monday. He was directed to report to the Ross River RCMP and advise them of his place of residence and then to report to the bail supervisor on October 17th, 2011. The Accused did neither.

October 19, 2011 (Information 11-00468B)

- 29. On October 19, 2011 at 11:50 a.m. RCMP in Whitehorse received 911 calls reporting a single vehicle roll over on the Alaska Highway near Rabbit's Foot Canyon in Whitehorse. The driver was identified as the Accused who had an unendorsed warrant for his arrest. He was not to be in Whitehorse as a result of his recognizance.
- 30. On a search, a crack pipe was located in his possession, which was also contrary to his conditions to abstain from alcohol and drugs.
- 31. As a result of the roll over the Accused was in intensive care and then medevaced to Vancouver for treatment. He was taken into custody on December 2, 2011.
- 32. As of March 28th, 2012 the accused has been detained for roughly total of 187 days.

[3] With respect to the Motor Vehicle offences, the s. 266 circumstances were that on January 8, 2011, due to having only one headlight operating on his vehicle, Mr. John, who was the operator, was stopped near Carmacks by the RCMP. He indicated who he was, and said that his licence was suspended. In fact, at that time, he was

disqualified on a three-year prohibition imposed May 20, 2008. The facts of the October 19th MVA offence are that Mr. John was operating a motor vehicle while not licensed. The suspension he was previously on had ended; however, he had not yet gained a valid operator's licence.

[4] Mr. John has been in custody for 322 days awaiting disposition of these matters. Crown is suggesting that for the September 26 offences, there be a sentence in the range of 24 to 30 months. There would be six months consecutive for the September 19 offences, four months concurrent for each of the September 23rd offences, and two months concurrent for the s. 145(3) charges. This would be followed by a period of probation in the area of three years, and a firearms prohibition for life.

[5] The Territorial Crown has filed notice and is seeking a minimum of three months on the s. 266 charge and a three-day sentence on the 5(1) charge that, pursuant to the filing of notice, does not have a minimum; it simply opens up the possibility of jail.

[6] Mr. John's criminal record was filed. It contains a significant number of entries. I counted 44 entries. There is a driver's abstract filed, as well, that shows that it is not the first time Mr. John has been operating vehicles when he is not licensed or able to do so.

[7] With respect to the sentence Crown is seeking, Crown is not opposed, based upon all the information in the Pre-Sentence Report and the other documents that were filed, to a portion of this sentence being served conditionally in the community. Crown counsel also points to the information from the Whitehorse Correctional Centre as perhaps allowing the Court to consider Mr. John's time in custody pursuant to the decision in *R. v. Vittrekwa*, 2011 YKTC 64, as entitling him to something more than one

to one in custody, perhaps as much as 1.5 to 1; but does point to some concerns in there, in particular, with respect to an attempt by Mr. John to leave from the Whitehorse General Hospital when he was being taken there from the Whitehorse Correctional Centre for medical purposes.

[8] Defence counsel is suggesting that, with credit of 1.5 to 1 being approximately 16 months, that Mr. John's sentence be 16 months time served, followed by a 12-month conditional sentence, with the time in all the other offences being concurrent. There is some dispute between counsel regarding whether there was agreement for two month sentences on the guilty pleas being offered to the assaults rather than four months. I am not inclined in these circumstances to probe further into that issue as, in my opinion, it will not have any significant impact on this decision. I note this is not a joint submission before me but there are many points on which counsel are not in disagreement with respect to certain of the offences.

[9] Mr. John is a 46-year-old citizen of the Ross River Dena Council. As indicated, he has a significant criminal record going back to 1984, with the last entry, however, being in 2007. Numerous of these offences were offences of violence; property offences, firearms offences, and I note he received a firearms prohibition of ten years in 2004. There are breach convictions, there are violations of parole, and there was, in 2007, a termination of the conditional sentence order that he was on. There are offences that clearly indicate his long-standing problem with both drug and alcohol use.

[10] There is a very comprehensive and helpful Pre-Sentence Report prepared for the Court that goes into considerable detail with respect to the circumstances that have



brought Mr. John to where he is today. I do not intend to go through it in huge detail, but it clearly contains the kind of information that draws the Court's attention to the principle of sentencing with respect to sentencings of First Nations individuals, and certainly *R. v. Gladue* [1999] S.C.J. No. 19, and *R. v. Ipeelee*, 2012 SCC 13, principles apply in this case. I have considered all the purposes and principles of sentencing, which I will not elaborate on, set out in s. 718 through 718.2, but the principle, in particular, I am referring to is that with respect to sentencing Aboriginal offenders and looking at all sentences that are available to them, keeping in mind their particular circumstances.

[11] Mr. John's biological mother was a residential school attendee. The family members Mr. John has spoken to indicated to him that their understanding of her experience there was that it was not a positive experience. She was the victim of a murder-suicide by her partner, not Mr. John's father, when he was three or four years of age. He cannot remember the details of the murder-suicide other than sitting in blood and being scared until somebody found him. He bounced around residences for a while after that, indicating that he suffered mental, physical, and sexual abuse until, fortunately for him, his aunt took him into her care and while in every way she seems to have been a tremendous support and provided him love, his step-father was very physically abusive to him and she appears to have been unable to protect him from that physical abuse. He left home at around 13 years of age.

[12] Mr. John explained that with respect to his education he has made steps to complete Grade 12. There seem to be some discrepancies in the report - not the fault of the reporter but just in the collateral information that is not necessarily consistent - but

the point that I find most interesting is Mr. John's explanation that he felt he was just moved through school; saying that when he attended school for Grade 9, he had no idea and no clue about what was put in front of him, and it seems he just drifted along without making any real progress. So clearly, his education is not as complete as it could be. He has some; he seems to have the capacity to do more.

[13] Mr. John indicates that in his childhood he struggled a lot and was involved in a lot of violence and was referred to as a half-breed or white boy and not fitting into either community, the First Nations community or the non-First Nations community. As a result, he learned to fight and had a number of fights. He says that he was introduced to drugs at about nine or ten, and alcohol at about nine years of age.

[14] He has been in a number of relationships. His most recent relationship was with the mother of his last three children. He has one older child. This recent relationship involved considerable sobriety on his partner's part until circumstances went off the rails just over a year ago, and she now struggles maintaining sobriety.

[15] Mr. John appears to have a reputation as a very good worker when he is able to work, but his problems with substance abuse and dealing with relationships resulted in him ending up on skid-row in East Hastings in Vancouver at one point in his life.

[16] He said that he was doing well in the relationship with his most recent partner, but he developed an addiction to pills for a back injury which, of course, with his history of substance abuse evolved into a considerably serious and significant issue to the point that, as indicated in the Agreed Statement of Facts, when he committed these offences, he was quite involved with drugs and alcohol.

[17] It is interesting that Family and Children's Services, who have the care of his youngest three children, in dealing with Mr. John, consider that he has a very strong and positive bond with his young children and has the capacity to provide a suitable home for them.

[18] While he has been in custody, it appears that he has made extremely good use of his time. He has been involved in a number of programs, and I have letters filed indicative of his positive involvement in the Substance Abuse Management Program, the Violence Prevention Program, and other programs, including very high involvement in AA. Interestingly, it is noted that there is not a lot of indication in the materials that have been prepared for Mr. John's prior sentencings that he has ever really had a strong motivation to change. This time he does, and those individuals that have been dealing with him at the Whitehorse Correctional Centre and counselling assess this as actually appearing to be a genuine and committed focus on changing his life.

[19] There is no question that alcohol and substance abuse places Mr. John at a very high risk to re-offend, and that is consistent with the Criminogenic Risk Assessment, but certainly I, in considering how that assessment is compiled, would say that if he does not use alcohol and drugs that his risk factors will be significantly reduced. I cannot lose sight of the fact that his criminal history and, basically, criminal lifestyle for most of his life, also puts him at a greater risk of reoffending. If he is able to separate himself from that, and it appears he was able to do so for some period of time, from 2007 on, and change his way of thinking, which is what the counselling and programming he is taking is apparently helping him do, then that also would significantly reduce his risk.

[20] The circumstances of these offences, in light of the personal history of Mr. John, certainly have a number of aggravating features, and his criminal record is clearly a very aggravating feature. The offences of September 26th are of some concern and we are dealing with firearms and ammunition that ultimately, although not the intention of Mr. John, resulted in the shooting of a police officer. Mr. John had these firearms in his possession. He had the control of these firearms and he chose to hand these firearms over to an individual that he would have had no reason to believe would have acted responsibly with them. I cannot say that he knew that this individual was going to go out and do what he is alleged to have done, and that one of these firearms would be used to shoot a police officer, but there is certainly an element of recklessness in how he handled these firearms. The objectives of denunciation and deterrence attach themselves to firearms offences because of the great harm that they can cause, and this needs to be reflected in the sentence that is imposed.

[21] Mr. John was on a crime spree, and, in one sense, it is aggravating that the substantive offences took place in a short period of time. In another sense, though, it could be viewed as more aggravating if they took place over a longer period of time because, given that they were in a short period of time after a break in his record, it may be possible for the Court to consider that this is a blip in what was perhaps a positive change in his lifestyle. If they had taken place continuously it would just be a return to the pattern of what his life was previously and the Court would have less reason to believe that he has a serious desire to change and the ability to do so. Mr. John was on Court-ordered conditions while committing some of these offences and he was, it would appear, operating a motor vehicle while he clearly was not in the best physical or mental

condition to do so, and that posed risks.

[22] Mitigating, of course, is that we are dealing with guilty pleas. There was an early admission of responsibility and early indications of an attempt to plead guilty to all the offences but the assault charges, which were resolved on the day of trial. Crown put forward that, generally speaking, Mr. John has been fairly cooperative in resolving these matters and, clearly, the positive information in the Pre-Sentence Report and the corroborating information allows the Court to consider a sentence that, in other circumstances, would not be available. Crown has said that a very lengthy federal term could have been imposed or at least would have been sought by the Crown if the circumstances were different and these matters were going to trial, and I would expect, also, if we did not have a positive Pre-Sentence Report. Given his record, Mr. John could certainly find himself facing a longer period of custody than what is being sought and what I am going to impose today.

[23] I am going to credit Mr. John a full 16 months credit for his time in pre-trial custody. I find in reviewing the information in the letter provided from the Whitehorse Correctional Centre, and in applying the principles set out in *Vittrekwa*, that certainly, Mr. John has done everything that he could be hoped or expected to do with respect to programming. While he has not worked, he has not declined work, and he has been spending a lot of time in counselling and there is no reason for me to believe there would be any deduction in his time.

[24] Behaviour does raise a bit of an issue, but, frankly speaking, his behaviour seems to have been overwhelmingly positive other than with respect to the incident in

which he attempted to run away from the Correctional Officers at Whitehorse General Hospital. Mr. John was fairly sick and says he was desperate for drugs at that time. He was charged after the attempted escape. The charge was dismissed, but I am satisfied that, balancing everything else, that the appropriate credit is 1.5 to one.

[25] As I said earlier, I am very mindful of the principles of sentencing and what the Supreme Court of Canada has said in the recent case of *Ipeelee, supra*, with respect to *Gladue* factors. They apply in this case, but, frankly, Mr. John's positive actions as viewed by others, and not only as expressed by himself, and his positive motivation, again, as viewed by others, and not only expressed by himself, certainly allow me to extend the application of the *Gladue* principles in imposing sentence on Mr. John.

[26] The sentence I am going to impose is as follows: With respect to the *Motor Vehicle Act* offences, and on the s. 266, I will impose a minimum sentence of three months, and it will be time served. With respect to the s. 5(1) *Motor Vehicle Act* offence, I will impose a sentence of three days time served. That will be concurrent to the three months time served. With respect to the September 26th s. 98(1)(b) offence, the sentence will be 13 months time served, consecutive to the *Motor Vehicle Act* offences. With respect to the s. 354(1) offence, the sentence will be 12 months consecutive. With respect to the s. 355 offences from September 19th; on each of those there will be a sentence of six months concurrent to each other but consecutive to the 12 months on the 354(1). With respect to the 145(3) charges, the sentences will be 60 days on each, concurrent to each other and concurrent to the s. 98(1)(b) offence. With respect to the 12 months --

[27] THE CLERK: I'm sorry Your Honour, I missed the last one.

[28] THE COURT: The 145(3) offences will be 60 days on each concurrent to each other and to the s. 98(1)(b) 13 month time-served sentence.

[29] With respect to the 12 month sentence on the 354(1) offence and the six months consecutive sentences on the s. 355 offences, concurrent to each other but consecutive to the 354, I am satisfied, considering the requirements of s. 742 of the *Criminal Code*, that notwithstanding Mr. John's history and his history of breaching, including breaches of conditional sentence orders, that these sentences can be served conditionally in the community. An individual with the criminal and breach history of Mr. John would not often find himself in a situation where a Court does this. Frankly, he has made this possible as a result of the progress he has made while in custody, the use of his time, and the positive opinion of his efforts and the belief that he has made a change in his life.

[30] So we are clear: the 12 month Conditional Sentence Order is the one that will be first, and the six month Conditional Sentence Order will then be consecutive to that. So we are dealing with --

[31] THE CLERK: I'm sorry, I missed the 12 month.

[32] THE COURT: The 12 month Conditional Sentence Order is on the 354 offence, that is consecutive to the time served on the s. 98(1)(b).

[33] THE CLERK: Sorry, so that 12 months consecutive is a conditional?

[34] THE COURT: It is a conditional sentence, and the six month sentences on the 355 offences concurrent to each other are consecutive to the s. 354(1) conditional sentence and that will also be served conditionally in the community.

[35] THE CLERK: Thank you.

[36] MS. NGUYEN: Sorry, I didn't get the sentence for the Ross River matters.

[37] THE COURT: Yes, thank you. The sentences on those are going to be three months time served on each, consecutive to each other but concurrent to the 13 months time served on the 98(1)(b), which is my way of resolving the issue between counsel.

[38] THE CLERK: Three months consecutive to each other but concurrent to the --

[39] THE COURT: Thirteen months time served.

[40] In imposing this sentence, I am also very mindful of the principle of totality and, dealt with separately, they certainly, again, give the potential for a lengthier sentence, but totality is an important principle when it is balanced in light of all of the other principles of sentencing. I do not want to leave the impression that I have not considered the need for denunciation and deterrence, because I think this sentence reflects that, and offences involving firearms in the manner that took place here, or any analogous manner, certainly can be expected to have highly denunciatory sentences.



[41] The terms of the Conditional Sentence Order will be as follows:

1. You will keep the peace and be of good behaviour; appear before the Court when required to do so by the Court;

This is the first Conditional Sentence Order, the terms will be almost the same for the second order.

2. 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;
3. Remain within the Yukon Territory unless you have written permission from your Supervisor or the Court;
4. Notify the Supervisor or the Court in advance of any change of name, address, and promptly notify the Court or the Supervisor of any change of employment or occupation;
5. Reside as approved by your Supervisor and not change that residence without the prior written permission of your Supervisor;
6. At all times, you are to remain within your place of residence, except with the prior written permission of your Supervisor. You must present yourself at the door or answer the telephone during reasonable hours to ensure you are complying with this condition. Failure to do so will be a presumptive breach of this condition;
7. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;

[42] Mr. Dick, I did not hear from you on the issue of whether he had previously indicated to you that he was prepared to provide a sample of his breath or urine.

[43] MR. DICK: Yes, he is.

[44] THE COURT: So that is something you have discussed with him, okay.

8. Having noted your consent, you will provide a sample of your breath and urine for the purposes of analysis upon demand of a Peace Officer who has reason to believe that you may have failed to comply with this condition;
9. You are not to attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
10. You are to take such alcohol, drug assessment, counselling or programming as directed by your Supervisor and, if directed, attend and complete a residential treatment program;
11. You are to take such psychological assessment, counselling, and programming as directed by your Supervisor;
12. You are to take such other assessment, counselling, and programming as directed by your Supervisor;
13. You are to have no contact directly or indirectly or communication in any way with Christopher Cornell and Jessica Johnson;
14. You are not to attend at the residence or workplace of either Christopher Cornell or Jessica Johnson;

I know you had indicated this with respect to the Probation Order, but I think it makes sense to have it on a conditional --

[45] MS. NGUYEN: Well, if he's not going to be in WCC, my concern was to not have him on conditions that were impossible, but it makes sense.

[46] THE COURT: Okay. So not at the workplace of either Mr. Cornell or Ms. Johnson.

15. You are to have no contact directly or indirectly or communication in any way with Dayna West or Jade Tuffs, except with the prior written permission of your Supervisor in consultation with Victim Services;
16. You are not to attend at the residence or workplace of Dayna West or Jade Tuffs, except with the prior written permission of your Supervisor in consultation with Victim Services;
17. You are not to have in your possession any firearms, ammunition, explosive substance or weapon;
18. You will make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;
19. You are to provide your Supervisor with consents to release information with regard to your participation in any programming, counselling or employment that you have been directed to do pursuant to this Conditional Sentence Order.

[47] Are there any terms that I have missed with respect to this first Conditional

Sentence Order?

[48] MS. NGUYEN: I didn't hear a term relating to weapons, perhaps I missed it.

[49] THE COURT: I did, I included that, I just did it out of order.

[50] MS. NGUYEN: Then that would be it.

[51] THE COURT: Okay. The six month Conditional Sentence Order will be on identical terms, except in order to facilitate, I guess, a graded approach into life on less restrictions, the house arrest clause will be replaced by a curfew clause. Normally, conditional sentences are house arrest. When a conditional sentence is structured this way I am more inclined to consider the appropriateness of making the second portion a curfew, contrary to the normal house arrest clause. I will do so in this case.

[52] So for the six month conditional sentence order:

1. You are to abide by a curfew by remaining within your place of residence between the hours of 10:00 p.m. and 7:00 a.m. daily, except with the prior written permission of your Supervisor. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;

[53] All of the other conditions remain the same as the other Conditional Sentence Order.

[54] The Probation Order will be for 30 months. The terms of the Probation Order will require you to:

1. Keep the peace and be of good behaviour and to appear before the Court when required to do so by the Court;
2. To notify the Probation Officer in advance of any change of name or address and promptly notify the Probation Officer of any change of employment or occupation;
3. To remain within the Yukon Territory unless you obtain written permission from your Probation Officer or the Court;
4. Report to a Probation Officer immediately upon completion of your conditional sentence, and thereafter when and in the manner directed by the Probation Officer;
5. To reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. For the first six months of this order, you are to abide by a curfew by remaining within your place of residence between the hours of 11:00 p.m. and 6:00 a.m. daily, except with the prior written permission of your Probation Officer. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;
7. You will abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;

I am not going to include the sample clause on the Probation Order at this time.

8. You are not to attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
9. You are to take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
10. Having given the Court your consent, attend and complete a residential treatment program as directed by your Probation Officer;
11. You are to take such other assessment, counselling and programming as directed by your Probation Officer;
12. You are to have no contact directly or indirectly or communication in any way with Christopher Cornell or Jessica Johnson;
13. You are not to attend at the residence or workplace of Christopher Cornell or Jessica Johnson;
14. You are to have no contact directly or indirectly with Dayna West or Jade Tuffs, except with the prior written permission of your Probation Officer in consultation with Victim Services;
15. You are not to attend at the residence or workplace of Dayna West or Jade Tuffs, except with the prior written permission of your Probation Officer in consultation with Victim Services;
16. You are to make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
17. You are to provide your Probation Officer with consents to release

information with regard to your participation in any programming, counselling or employment that you have been directed to do pursuant to this Probation Order;

18. You are to not have in your possession any firearm, ammunition, explosive substance or weapon.

[55] Pursuant to s. 109 of the *Criminal Code*, you are prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for life. If there is some reason that you need, in your future, to possess a firearm for one of the reasons set out in the *Criminal Code*, such as sustenance hunting, you may make an application.

[56] I do not recall; was the Crown seeking a DNA order for the break and enter?

[57] MS. NGUYEN: Yes. It's a secondary offence, and I don't believe it's specifically enumerated but it's an offence where the Crown proceeded by indictment, where a DNA warrant may have been attained, and the maximum penalty is more than five years. So I believe it's (a) underneath the secondary offences.

[58] THE COURT: What I am looking at is breaking and entering into a place other than a dwelling house is a secondary designated offence, but he has been charged under s. 98.

[59] MS. NGUYEN: Yes.

[60] THE COURT: Not under s. 348.

[61] MS. NGUYEN: That's correct, which is break and enter, steal, firearm.

[62] THE COURT: Right, which would seem to be a bit of an anomaly, but notwithstanding that, I am satisfied with the Crown's election that this is a secondary designated offence and I will make an order that a sample of DNA be provided.

[63] MS. NGUYEN: Thank you, Madam Clerk. She helped me figure that out.

[64] THE COURT: I will also order forfeiture of all the items seized with respect to these charges to the Crown. As indicated in our discussion, Crown will then, where the individuals that may have a lawful right of possession are known, proceed accordingly with respect to dealing with any further forfeiture that needs to be made and in ascertaining the lawful owners where they may not know them at this point in time.

[65] Is there anything with respect to the Probation Order?

[66] MR. DICK: To which file will it attach?

[67] THE COURT: The Probation Order will attach itself to the s. 98(1)(b) and 354(1) offences and the s. 266 offences.

[68] MS. NGUYEN: Yes, thank you.

[69] THE COURT: I think that it is sufficient to have it attached on those two offences.

[70] THE CLERK: And the intention of the Court is that all the jail is time



served or --

[71] THE COURT: Conditional sentence starts today.

[72] THE CLERK: Today, thank you.

[73] THE COURT: I can go through that with you after just to make sure that it is clear.

[74] MS. NGUYEN: That just leaves the victim fine surcharge and the Crown --

[75] THE COURT: That will be waived in the circumstances.

[76] MS. NGUYEN: Thank you.

[77] THE CLERK: There was one outstanding matter.

[78] MS. NGUYEN: Yes, withdrawn, thank you.

[79] THE COURT: That charge will be withdrawn. Thank you counsel, for the helpful Agreed Statement of Facts and the organized way in which this was approached.

---

COZENS C.J.T.C.