

Citation: *R. v. Johnson*, 2012 YKTC 75

Date: 20120504  
Docket: 10-00574  
10-00574C  
10-00574D  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before: His Honour Chief Judge Cozens

REGINA

v.

JASON DENNIS JOHNSON

Appearances:  
Jennifer Grandy  
Brook Land-Murphy

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCING**

[1] COZENS C.J.T.C. (Oral): Jason Johnson has been found to have committed a breach of the conditional sentence order of 15 months he was placed on by Justice Gower sitting as a Territorial Court judge.

[2] The first allegation of breach, which went to a hearing, is that he failed to report as directed by his Conditional Sentence Supervisor on April 13 and 16, 2012. Without going into the details particularly, he had been given permission on April 5th to come to Whitehorse to attend course training. He did attend the course training; however, the directions that he was provided with when he came to Whitehorse were that he continue to comply with all the terms of his Conditional Sentence Order including the reporting

requirements and that he report in person on Monday, April 16th at 9:30. He did not report on the Friday and the term of his reporting clause that he had been provided with by his supervisor required him to report every Friday. He also did not report on the Monday in person.

[3] A decision was not made on that Friday. It was adjourned over to the next week. Mr. Johnson returned home and on April 28th he was found in his residence under the influence of alcohol and provided a breath sample of 237 milligram percentile. He, of course, was not allowed to consume alcohol. The indications were that he was in his house. His brother came over with some friends and Mr. Johnson, who was somewhat stressed due to the circumstances, decided to consume alcohol. There is no indication that there had been any issue with respect to his consuming alcohol prior to this occasion on the 28th. He has admitted that breach.

[4] The final breach which is before the Court today, which is admitted, is that he was directed to perform 50 hours of community work service within the first six months. He performed one. There was some issue raised in submissions with respect to the fact that the Conditional Sentence Supervisor had not directed him in particular to do any particular hours, but as I indicated in Court when this matter was before me last, Mr. Johnson is the one that is subject to the conditional sentence requirement. He has only one conditional sentence order and he needs to remember he has the 50 hours, and he needs to be proactive, as do all individuals on conditional sentence orders that are not otherwise limited, perhaps by cognitive abilities, to pursue opportunities to provide community work service on his own. His supervisor, who is supervising a number of people who may have community work service hours, should not have to have the

burden fall on her to find hours for everyone. I think Mr. Johnson understands that at this point in time.

[5] The Crown's position on the breach is that there should be a period of suspension of 90 to 120 days. Defence counsel says 30 to 60 days less any credit for time in custody. He spent seven days in custody between April 28th and May 4th, and six days in custody between April 18th and the 23rd. There does not appear to be any issue in this case about a warrant being issued and that there should be any suspension of time on that, so I am not considering that any further.

[6] Mr. Johnson certainly falls into the category where the law, as set out in *R. v. Gladue*, [1999] S.C.J. No. 19, and recently re-stated in *R. v. Ipeelee*, 2012 SCC 13, applies. As a young First Nations individual he has a criminal history. He brings some problems to the Court with respect to his past, but he has also demonstrated that he is able to do well and perform well. I note that, having read the decision for which he originally received the conditional sentence, that it was considered to be a somewhat out-of-character assault by him that resulted in a fight that he did not initiate, but that he certainly took way further than he should have once he was involved in it. There is every reason to believe Mr. Johnson can live a pro-social life and that he does not need to be in trouble anymore.

[7] It is to be noted that he did successfully complete this course. He has already suffered a consequence as a result of his failure to report in that the second set of courses which his First Nation provided for he missed because he was sitting in

custody. That did not detract from what he had already accomplished and the licences and courses he had completed, but he obviously lost the opportunity to take more.

[8] He has work waiting for him. A letter was provided by his employer saying that he could have been working now and have work right through the summer were he not in custody. It is unfortunate that Mr. Johnson decided to drink alcohol, and it is unfortunate that he did not make the efforts to finish the community work service when he had opportunities to do so.

[9] While there may be a presumption that upon a breach of a conditional sentence order that the sentence can be collapsed, that, of course, is not what occurs in every case. Each individual in each circumstance of breach need to be considered. We do have three breaches here, but I am not satisfied that these breaches require that his conditional sentence be collapsed, nor that it be suspended for a particularly long period of time. I believe that his ability to contribute to the community is strong and I believe that, in the circumstances, while there will be a suspension of the conditional sentence and a period of time in custody, it should be less than what was sought by the Crown.

[10] The way I am going to word it, is that with respect to the breach for the failure to report, that the six days he spent in custody between April 18th to 23rd is sufficient to deal with that allegation of breach.

[11] With respect to the consumption of alcohol, the sentence will be further suspended and he will be in custody. Taking into account that he has already spent seven days, he will be released on May 31st. So it will be suspended, and he will remain incarcerated until May 31st, and then he will be released on that date. I

understand that with the employment he has he will, in all likelihood, be able to step right out into employment by June 1st, which maintains most of the working season for him, and I think that this is important in his case. I think it will be beneficial not only to him but to the community, and will assist in ensuring that Mr. Johnson does not find himself before the courts again.

[12] With respect to the breach for the failure to do the community work service hours, I am going to take no action other than to change the Conditional Sentence Order. I am going to add ten hours community work service so that it says 60, one of which is already done, and I am going to extend it for four months from today's date, which will give him more than three months to do those remaining 59 hours of community work service.

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COZENS C.J.T.C.