

In the Court of Appeal for the Northwest Territories

Citation: *R v Jackson*, 2023 NWTCA 1

Date: 2023 01 12

Docket: A1-AP-2020-000017

Registry: Yellowknife, N.W.T.

Between:

His Majesty the King

Applicant/Respondent

- and -

James Theodore Jackson

Respondent/Appellant

The Court:

**The Honourable Justice Patricia Rowbotham
The Honourable Justice Kevin Feehan
The Honourable Justice Bernette Ho**

Restriction on Publication

Identification Ban – See the *Criminal Code*, section 486.4.

By Court Order, information that could identify the complainant must not be published, broadcast, or transmitted in any way.

NOTE: Identifying information has been removed from this judgment to comply with the ban so that it may be published.

Memorandum of Judgment

Application to Dismiss Appeal

Memorandum of Judgment

The Court:

[1] The Crown applies to dismiss the appeal of James Jackson for delay resulting in significant prejudice pursuant to r 3(1) of the *Rules of the Court of Appeal of the Northwest Territories Respecting Criminal Appeals* and r 48 of the *Rules of the Court of Appeal of the Northwest Territories Respecting Civil Appeals*.

[2] On December 22, 2020 Mr Jackson appealed his conviction of December 3, 2020 for a major sexual assault contrary to s 271 of the *Criminal Code*, RSC 1985, c C-46. He was sentenced to two and one-half years' incarceration, but after credit for time served, he served 415 days and was released on September 5, 2021.

[3] The Crown's application for dismissal, with an attached affidavit, was first served on March 16, 2022 and then re-filed on August 17, 2022. This matter has been before the Court on seven prior occasions: March 5, April 30, September 17, and December 17, 2021, April 26, May 6, and October 25, 2022. Mr Jackson attended remotely on two of those occasions, April 30, 2021 and October 25, 2022.

[4] On October 25, 2022, Mr Jackson indicated that he wished to hire legal counsel and bring an application for new evidence on appeal. He and a family friend who was with him were advised by the panel that he would first have to order and pay for a trial transcript, and determine whether he wished to proceed. He was told the matter would go over to January 10, 2023 at 10:00 a.m.

[5] By January 10, 2023, Mr Jackson had not filed a trial transcript nor a fresh evidence application. With respect to his ground of appeal of ineffective assistance of counsel, we are not aware that he has waived privilege, and an affidavit had not been filed from trial counsel. Neither Mr Jackson nor his friend were in attendance on January 10, in person or by telephone. The Court scheduler had attempted to contact Mr Jackson and his friend by telephone the day before, without success.

[6] The Court adjourned until 10:40 a.m. to allow Mr Jackson more time to attend. During that time, a further attempt was made to contact him by telephone, again without success. The Court then determined to proceed in his absence.

[7] The Crown argued there has been significant prejudice by virtue of the delay, and in particular submitted that when a matter is drawn out for four and one-half years, as in this case, it is well known that the quality of the evidence erodes. Additionally, there is a continuing negative impact upon the complainant and their loved ones.

[8] In *R v Jordan*, 2016 SCC 27, para 23, [2016] 1 SCR 631, the Court observed:

Victims of crime and their families may be devastated by criminal acts and therefore have a special interest in timely trials [and we would add appeals] Delay aggravates victims' suffering, preventing them from moving on with their lives.

[9] In *R v Arcand*, 2010 ABCA 363, para 177, 264 CCC (3d) 134, the Court said:

. . . there is . . . intrinsic to major sexual assaults the *likelihood of other very real psychological or emotional harm*. That includes fear, humiliation, degradation, sleeplessness, a sense of defilement, shame and embarrassment, inability to trust, inability to form personal or intimate relationships in adulthood with other socialization problems and the risk of self-harm or even suicide. While these effects fall into the psychological or emotional harm category, they may be equally or even more serious than the physical ones but much less obvious. . . [emphasis in original].

[10] Those statements are applicable here.

[11] In light of the above, the application of the Crown is granted. Mr Jackson's appeal is dismissed for delay in advancing the appeal, resulting in significant prejudice.

Appeal heard on January 10, 2023

Memorandum filed at Yellowknife, NWT
this 12th day of January, 2023

Authorized to sign for: Rowbotham J.A.

Feehan J.A.

Authorized to sign for:

Ho J.A.

Appearances:

B. MacPherson
for the Applicant

Respondent J.T. Jackson (no appearance)

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