

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RUSSELL HAMILTON

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Transcript of the Oral Decision delivered by The Honourable Justice K. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 30th day of April, 2014.

REVOCATION OF CONDITIONAL SENTENCE ORDER

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APPEARANCES:

Ms. J. Bond: Counsel for the Crown

Mr. N. Homberg: Counsel for the Accused

(Charge under s. 266 of the Criminal Code of Canada)

1 THE COURT: On April 7th, 2014, I  
2 sentenced Russell Hamilton for an assault against  
3 his former partner, Brandy Bourke. Part of that  
4 sentence was a conditional sentence order, which  
5 is commonly referred to as house arrest, and that  
6 required that Mr. Hamilton adhere to certain  
7 conditions. Among these was a condition that he  
8 abstain from alcohol, intoxicating substances or  
9 drugs, except in accordance with the directions  
10 of, or a prescription from, a licenced medical  
11 practitioner.

12 On April 20th, 2014, Mr. Hamilton breached  
13 that term of the order. He appeared before me  
14 with counsel on April 28th, 2014, and admitted to  
15 the breach.

16 The circumstances of the breach are set out  
17 in a report from Mr. Hamilton's conditional  
18 sentence supervisor and the report and its  
19 attachments, including witness statements from  
20 the conditional sentence supervisor and a  
21 statement prepared by Constable K. Hipolito, from  
22 the Royal Canadian Mounted Police, which were  
23 admitted by the defence.

24 This is a summary of what happened: On  
25 April 20th, 2014, the RCMP received a telephone  
26 call from Shawna Ekotla, Mr. Hamilton's current  
27 partner and the mother of his youngest child.

1 She believed that Mr. Hamilton was intoxicated at  
2 his residence, located in an apartment building,  
3 and she provided the address. The RCMP went to  
4 the apartment building and there they encountered  
5 Social Services personnel who explained that  
6 they, too, had received a call about Mr. Hamilton  
7 being intoxicated and that they were there to do  
8 a wellness check on the children in his care.

9 The RCMP and the Social Services personnel  
10 gained entry to the main apartment building and  
11 went to the door of Mr. Hamilton's apartment.  
12 The RCMP members banged loudly on the door and  
13 identified themselves as police officers. This  
14 went on for approximately 15 minutes, during  
15 which time the door was not answered. There was  
16 loud music coming from the apartment.

17 The property manager arrived subsequently  
18 and let the RCMP and the Social Services  
19 personnel into the apartment. Inside, they found  
20 Mr. Hamilton along with two small children. The  
21 children were asleep in a bedroom. Mr. Hamilton  
22 was passed out on the floor of the living room in  
23 the apartment. The RCMP observed bottles of  
24 vodka as well as empty beer cans. They managed  
25 to rouse Mr. Hamilton, who, as he admitted in  
26 court on Monday, was drunk. Mr. Hamilton was  
27 arrested and has been detained in custody since

1           that time.

2           Section 742.6(9) of the Criminal Code  
3           provides four options to the Court where there  
4           has been a breach of a conditional sentence  
5           order: The Court can take no action; it can  
6           change the optional conditions, of which this is  
7           one; it can require the offender to serve a  
8           portion of the sentence in custody; or it can  
9           terminate the conditional sentence order  
10          altogether and direct the offender to be  
11          committed to custody for the remainder of the  
12          time.

13          When I heard this matter on Monday, Defence  
14          counsel suggested that an appropriate penalty in  
15          the circumstances would be to suspend the  
16          conditional sentence order for the period of time  
17          that Mr. Hamilton has spent in custody since his  
18          arrest on April 20th but to permit him to serve  
19          the remain of the conditional sentence order in  
20          the community in accordance with the terms that  
21          were imposed on April 7th. The Crown submitted  
22          that this is an appropriate case for the Court to  
23          terminate the order completely.

24          Before I get into the positions of each  
25          party, I want to say some things about  
26          conditional sentence orders.

27          First, a conditional sentence order is not

1 intended to be an easy ride. As I suggested in  
2 the sentencing hearing on April 7th, a  
3 conditional sentence order can, in some ways, be  
4 even tougher than jail. In jail, the choices are  
5 largely made for offenders. It is a highly  
6 structured and controlled environment and thus,  
7 it is harder to make bad choices. Some offenders  
8 need this.

9 Under a conditional sentence order, an  
10 offender is required to make choices on his or  
11 her own and, in doing so, prove that he or she is  
12 capable of making the right choices even in  
13 difficult situations.

14 Second, a conditional sentence order is a  
15 form of punishment. It is imposed because an  
16 offender committed a crime that is serious enough  
17 to attract significant restrictions on the  
18 offender's liberty, albeit not jail. A court  
19 order is a very serious thing. The courts, and  
20 society for that matter, expect nothing less than  
21 the most scrupulous adherence to court orders and  
22 directions, failing which there are consequences  
23 that must be commensurate with and reflect the  
24 seriousness of the breach.

25 Third, as with all sentences, a conditional  
26 sentence order is intended to meet the goals and  
27 objectives of sentencing having regard to the

1 circumstances of the offender, the circumstances  
2 of the offence, and the circumstances of the  
3 crime itself. Among those goals are denunciation  
4 and deterrence, both specific and general, and of  
5 course, the goal of rehabilitation for the  
6 offender.

7           Rehabilitation can take place in a variety  
8 of circumstances and with varying levels of  
9 intensity. The effectiveness of any  
10 rehabilitative program will depend very much on  
11 the individual offender. Some offenders require  
12 little structure and supervision while others  
13 will need more intervention to effectively  
14 address the underlying factors that contribute to  
15 that offender's illegal conduct.

16           Once a person is convicted and sentenced by  
17 a court, the courts do not generally follow up on  
18 how effective a sentence is while it is being  
19 served. The Court's role is to determine if an  
20 offence has been committed and then craft what it  
21 considers to be an appropriate sentence, using  
22 information it has about the offender's past to  
23 try and impose a sentence that will be effective  
24 in the future. If a sentence is ineffective,  
25 offenders appear before the courts again.

26           To a certain extent, a community-based  
27 sentence, such as a conditional sentence order,

1 is an exception to this limitation. Unlike a  
2 jail sentence where breaches and infractions are,  
3 for the most part, addressed by the institution  
4 itself, if an offender breaches a conditional  
5 sentence order, he or she comes before the same  
6 court - and, typically, the same judge - that  
7 imposed the order. Ideally, the judge will have  
8 the benefit of receiving, in addition to the  
9 report about the circumstances of the breach, an  
10 explanation as to why that breach occurred. From  
11 this, the judge can, at least in part, determine  
12 if the sentence needs to be altered and perhaps  
13 even how it should be altered to make it more  
14 effective in achieving the goal of rehabilitation  
15 before it is over. This is largely reflected in  
16 the remedies available to the Court under the  
17 Criminal Code to which I referred earlier.

18 Finally, although sentencing is a highly  
19 individualized process, and we often emphasize  
20 for good and valid reasons the circumstances of  
21 an offender in crafting an appropriate sentence,  
22 the interests of society as a whole remain  
23 important. Sentences must appropriately protect  
24 members of our community and they must express  
25 society's disapproval for illegal conduct. They  
26 must engender respect for the law and respect for  
27 one's legal obligations. They must discourage

1 illegal conduct both generally and by the  
2 individual offender. Anything less than that  
3 risks undermining significantly the community's  
4 confidence in our justice system as a whole.

5 With those four factors in mind, I now turn  
6 to the specific circumstances of this case.

7 Many of the submissions that were provided  
8 by the defence, including the submissions from  
9 Mr. Hamilton himself, covered ground placed  
10 before me at the sentencing on April 7th, 2014.  
11 These included Mr. Hamilton's age, employment  
12 status, family circumstances, and, not  
13 insignificantly, his struggles with substance  
14 abuse. It was also pointed out once again that  
15 Mr. Hamilton was able to comply with conditions  
16 similar to what were imposed in the conditional  
17 sentence order for a period of approximately two  
18 years, between the time of the charge and the  
19 time of the sentencing.

20 Notwithstanding his recent arrest and  
21 detention, Mr. Hamilton's current employment  
22 supervisor confirmed that he is still employed as  
23 a security guard and that he may resume his  
24 duties. She also suggests that he is an  
25 excellent employee.

26 Mr. Hamilton's current partner, Ms. Ekotla,  
27 provided a letter of support in which, among

1 other things, she explained that the two of them  
2 plan to take counselling together and address  
3 their issues. She reiterates that he is the  
4 breadwinner for the family and states that if he  
5 is sent to jail, it will entail hardship for the  
6 family as a whole.

7 As I noted, Mr. Hamilton, you also made a  
8 number of submissions on your own behalf. In  
9 those submissions, you expressed remorse for  
10 breaching the terms of your conditional sentence  
11 order and you suggested that you are taking  
12 responsibility for your actions.

13 You also offered an explanation as to why  
14 this breach occurred. While I do not doubt the  
15 sincerity of your expression of your remorse,  
16 Mr. Hamilton, insofar as you are unhappy with the  
17 situation in which you now find yourself, I am  
18 not at all convinced that you are, in fact,  
19 taking responsibility for what happened, nor that  
20 you are remorseful for committing the breach  
21 itself. I am struck and more than a little  
22 dismayed by the extent to which you, as well as  
23 Ms. Ekotla, blame the victim, Ms. Bourke, for  
24 leading you to consume alcohol and thereby to  
25 breach the terms of your conditional sentence  
26 order.

27 Mr. Hamilton, you, and you alone, are

1 responsible for what happened on April 20th. We  
2 are all faced with choices throughout our lives.  
3 We can take responsibility for our lives and our  
4 actions, or we can blame others. In this  
5 context, the latter is simply not acceptable.

6 You chose to respond to a stressful  
7 situation by drinking and you chose to drink to  
8 excess. You did this knowing full well that you  
9 were breaching the terms of your conditional  
10 sentence order. You did this notwithstanding  
11 your own acknowledgment at your sentencing  
12 hearing, held scarcely two weeks before, that  
13 alcohol and substance abuse were prominent  
14 factors in your past criminal behaviour. You did  
15 this notwithstanding your representation to me  
16 and to this court on April 7th that you were  
17 actively taking steps to change and to address  
18 your substance abuse problems, and that you would  
19 be capable of handling the relative freedom and  
20 choices inherent in that conditional sentence  
21 order. The abstention provision was, as you will  
22 recall, something that was proposed by you.

23 This happened only 13 days into the term of  
24 that conditional sentence order. It should come  
25 as no surprise to you that a breach that comes so  
26 soon following the imposition of a conditional  
27 sentence order erodes significantly my

1 confidence, and the Court's confidence generally,  
2 in the overall effectiveness of that form of  
3 sentence for you.

4 The amount of liquor involved in this case  
5 is highly aggravating. The admitted facts are  
6 that there were two bottles of vodka and several  
7 opened, empty beer cans in your apartment when  
8 the police found you. You had passed out as a  
9 result of the alcohol you consumed. This was not  
10 a "one-off" or a minor incident. This was not a  
11 case of an unintentional or negligent  
12 transgression. The facts lead me to conclude  
13 that this was a decidedly intentional act on your  
14 part.

15 At your sentencing on April 7th and again on  
16 April 28th, much was made of your family  
17 responsibility and the fact that you are an  
18 active caregiver for your children. There was  
19 also much made of the way that a conditional  
20 sentence order would allow these responsibilities  
21 to be accommodated. In light of this, it is  
22 extremely disturbing that you breached your order  
23 and engaged in heavy drinking notwithstanding  
24 that you had two young children entrusted into  
25 your sole care at the time. You put those  
26 children at great risk.

27 I have taken into account the fact mentioned

1 earlier that you complied with conditions similar  
2 to these successfully for approximately two  
3 years, between the time of the charge and the  
4 time of the sentence. However, the seriousness  
5 of the circumstances here are such that the  
6 impact of this past positive behaviour is  
7 diminished. Moreover, the breach here goes to  
8 the very essence and rationale put forward for  
9 the order in the first place. The fact that you  
10 had complied with the Court-ordered terms of your  
11 bail gave me some assurance that you could comply  
12 with the conditional sentence order. By your  
13 actions on April 20th, however, you have shown  
14 that you cannot.

15 As I said earlier, Mr. Hamilton, a court  
16 order has to be obeyed. There is no choice and  
17 it is not optional. Those who are subject to  
18 conditional sentence orders have to appreciate  
19 this and they have to show the Court and others  
20 in the justice system that they appreciate this  
21 by complying with the terms of the order.

22 You have demonstrated that you do not  
23 appreciate it or, alternatively, that you are  
24 incapable of controlling your actions so that you  
25 can comply with its terms. You come before the  
26 Court now not with a plan for what you might do  
27 to ensure that you comply in the future but,

1           rather, with empty excuses for why you breached  
2           it and, quite frankly, a shocking lack of insight  
3           as to why.

4           There is simply too little assurance that  
5           you will be able to comply with the conditional  
6           sentence order if it is continued. You have not  
7           demonstrated that you have the personal insight  
8           or sense of responsibility to allow you to make  
9           the right choices instead of breaching your  
10          order. That, in turn, sets you up for failure  
11          and turns the Court into nothing more than an  
12          enabler. As well, in this context, it sets you  
13          up for more serious legal and, consequently,  
14          personal consequences down the road. You will  
15          just wind up digging yourself deeper into that  
16          hole, and your friends and your family, and  
17          ultimately you, will suffer from that.

18          In the circumstances, the only viable course  
19          of action that I can see is to terminate the  
20          conditional sentence order altogether.

21          Mr. Hamilton, it is very important that you  
22          understand this does not mean you cannot be  
23          rehabilitated or that you are beyond hope. I am  
24          a firm believer that everyone can change. I have  
25          seen people change. What it means, however, is  
26          that a conditional sentence order is not the  
27          right vehicle for you to get to where you need to

1 be.

2 So, Mr. Hamilton, you will serve the  
3 remainder of the term of the conditional sentence  
4 order in custody. If you are truly committed to  
5 changing -- Please pay attention to me and do  
6 not shake your head at people in the gallery.

7 THE ACCUSED: I'm just talking to my mom.

8 THE COURT: Do not talk to your mother  
9 while I am speaking.

10 If you are truly committed to changing,  
11 Mr. Hamilton, you will have many opportunities to  
12 deal with your substance abuse and other issues  
13 through the programs offered through the  
14 institution.

15 The no contact order with respect to Brandy  
16 Bourke will continue. The community service  
17 hours that were imposed will have to be completed  
18 during the term of your probation which will  
19 follow your release. The time to pay the victims  
20 of crime surcharge was, on April 7th, set for  
21 four months from that time, but that was of  
22 course premised on Mr. Hamilton being in the  
23 community and working. In the circumstances, I  
24 am going to extend that once again - the time to  
25 pay the surcharge - to December 31st, 2014.

26 Counsel, is there anything else?

27 MS. BOND: No, Your Honour. Just to

1 confirm -- just to be clear, the no contact order  
2 will be on the Warrant of Committal?

3 THE COURT: Yes. Mr. Homberg?

4 MR. HOMBERG: Nothing further, Your Honour.

5 THE COURT: Very well then. We are  
6 adjourned.

7 MS. BOND: Thank you.

8 .....

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11 Certified Pursuant to Rule 723  
12 of the Rules of Court

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Jane Romanowich, CSR(A)  
Court Reporter

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