

CANADA / JUDGMENT

R. v. Westbury

2011 BCSC 526

COURT

Supreme Court of British Columbia

DECIDED

6 April 2011

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2011 BCSC 526 R. v. Westbury IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Westbury, 2011 BCSC 526 Date: 20110406 Docket: X071813 Registry: New Westminster Regina v. James Edward Westbury Before: The Honourable Mr. Justice N. Smith Oral Reasons for Sentence Counsel for the Crown: C.W. Bruce Counsel for the Accused: N.J. Preovolos Place and Date of Hearing: New Westminster, B.C. April 6, 2011 Place and Date of Sentence: New Westminster April 6, 2011

- [1] THE COURT: Mr. Westbury was under an 18-month conditional sentence order and had been for some 14 months when he was charged and subsequently pleaded guilty to assault. The Court apparently dealt with the assault with a one-year probation order. However, there remains the fact and Mr. Westbury admits that the same act constitutes a breach of the conditional sentence order.
- [2] The Criminal Code in these circumstances gives a number of options ranging from taking no action at all to terminating the conditional sentence order and directing that the balance of it be served in custody. But for this incident, the conditional sentence order would have expired by now, but in fact s. 742.6(10) suspends the running of the conditional sentence order from the issuance of a warrant which I am told was October 28th, 2010, meaning there are some 65 days remaining in the conditional sentence order.
- [3] The case law, beginning with R. v. Proulx, 2000 SCC 5, [2000] 1 S.C.R. 61, and other cases including R. v. Lutz (1997), 121 C.C.C. (3d) 216 (B.C.C.A.) and R. v. Doucette, 2009 BCCA 411, and others relied upon by the Crown, it is clear that although the Court has the option to do nothing, there is a presumption that the order should normally be terminated.
- [4] The Code s. 742.6(9) gives the Court various intermediate steps between taking no action and a full termination of the order, but it is clear to me that this was a serious breach and it was a serious breach that must have consequences if the conditional sentence system is to be respected.
- [5] At the same time, I take into account that Mr. Westbury did serve ten days in custody prior to his guilty plea on the assault charge and that but for this one breach he was apparently fully compliant with the terms of the conditional sentence order.

- [6] Balancing those conditions, I am going to make an order pursuant to s. 742.6(9)(c) of the Code and order that Mr. Westbury serve 30 days in custody for breach of this order. At the conclusion of that 30 days, the conditional sentence order will resume for the balance of the 35 days involved, and noting that the breach appears to have been associated with drunkenness, I am going to under subsection (b) add an additional condition that when the conditional sentence order resumes there be a condition that Mr. Westbury refrain absolutely from consumption of alcohol or any other intoxicants; it is the standard wording that appears in those things. "N. Smith J."

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