

Reasonable Time Before Trial: Applying *R. v Jordan* to Youth Crimes

By F Jiwa

On November 15, 2019 in the case *R. v K.J.M.*¹, the Supreme Court of Canada laid out the applicability of *R. v Jordan*², a case determining ceilings for the reasonable length of time before a trial, to cases involving youth. The Supreme Court determined in this case that the ceilings identified in *Jordan* did apply to youth cases and that a lowering of the maximum range of eighteen to thirty months for cases concerning youth was unnecessary.³ The Supreme Court also determined that the delays in *R. v K.J.M.* that should be taken into account did not exceed eighteen months regardless and that therefore *R. v Jordan* did not need to be applied.⁴

In April 2015, a fifteen-year-old boy referred to as *K.J.M.* stabbed another individual in the face and head during a fight.⁵ *K.J.M.* was charged and pleaded not guilty on grounds of self-defence.⁶ He was tried almost nineteen months after being charged and found guilty of assault and weapons charges.⁷ Between *K.J.M.*'s charge and trial, a case called *R. v Jordan* came out defining the reasonable length between a charge and a trial in accordance with section 11(b) of the *Canadian Charter of Rights and Freedoms*, which states:

“11. Any person charged with an offence has the right: (b) to be tried within a reasonable time...”⁸

¹ *R. v K.J.M.*, 2019 SCC 55 [*K.J.M.*].

² *R. v Jordan*, 2016 SCC 27 [*Jordan*].

³ *K.J.M.*, *supra* note 1 at para 4.

⁴ *Ibid* at para 5.

⁵ *Ibid* at para 1.

⁶ *Ibid*.

⁷ *Ibid*.

⁸ *Ibid* at para 2; *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11 at s 11(b).

According to *Jordan*, depending on the charge, eighteen to thirty months was determined to be the maximum reasonable time for a trial to be delayed after an accused is charged.⁹ Although his trial occurred over eighteen months after the charge and *K.J.M.* requested a stay in charges under, *Jordan*, both the trial judge and the Court of Appeal determined that a stay in charges should not be granted in the *K.J.M.* case.¹⁰

The majority of the Supreme Court decided to uphold the Court of Appeal's decision not to grant a stay of the charges.¹¹ After considering *K.J.M.* under the reasonable time rules listed in *Jordan*, including removing delays caused by the defence, the Supreme Court of Canada found that the length of time between the charge and trial in this case was within the limits specified in *Jordan*.¹² As *K.J.M.* would be considered within reasonable time for trial under *Jordan*, the application of *Jordan* would not have resulted in a stay in this case.¹³

Within their decision in *K.J.M.*, the Supreme Court considered whether *Jordan* should apply in cases where the accused was a youth.¹⁴ Under the majority decision, the Supreme Court stated that the reasonable time identified in *Jordan* effectively took into consideration the need for reasonable time in youth cases and that unless it is proven that *Jordan* is inadequate for dealing with timeliness in youth cases, the eighteen to thirty month ceiling identified in *Jordan* serves as a sufficient maximum for youth cases as well.¹⁵ While there are many reasons why being tried within a reasonable time is particularly important to youth, they determined that there is no evidence that the *Jordan* ceilings are not effective in cases involving youth.¹⁶ Further, youth

⁹ *Jordan*, *supra* note 2 at para 49.

¹⁰ *K.J.M.*, *supra* note 1 at para 21-22.

¹¹ *Ibid* at para 5.

¹² *Ibid*.

¹³ *Ibid*.

¹⁴ *Ibid* at para 33.

¹⁵ *Ibid* at para 4.

¹⁶ *Ibid* at para 63.

cases in which further expediency is requested continue to be accommodated after the *Jordan* decision.¹⁷ Interestingly, the majority explain that to make different ceilings for various groups would quickly get out of hand and instead they suggest that there should remain a uniform approach to reasonable time.¹⁸ They argue that youthfulness is still considered as a factor when applying the *Jordan* test to see if a delay is reasonable.¹⁹ The dissent in this case argue that the ceiling for youth should be lower and state that as youth are tried under a separate court, the ceiling for youth should be analyzed separately.²⁰ They determine that, under a separate analysis, 15 months should be the ceiling for youth cases in fitting with the purpose of the separate youth criminal justice system.²¹

While I agree that in *K.J.M.* that the accused should not have been granted a stay, I take issue with the argument made by the majority that there should not be a separate analysis for youth cases. As mentioned above, the majority argues that if they chose to implement a separate ceiling for youth cases that this would quickly spiral out of control and lead to a necessity of multiple sets of rules for different categories of people.²² This argument does not seem to be valid. While not every group has a separate court system, youth do have a separate court for reasons named by the majority in *K.J.M.* – in fact, the majority spends a great deal of time discussing the reasons why timeliness is essential in youth cases.²³ Among the reasons they provide are that youth are less developed and have different concepts of time, meaning that a delay in consequences might lead to a loss of connection between action and consequence.²⁴ Delays can also impact youth

¹⁷ *Ibid.*

¹⁸ *Ibid* at para 65.

¹⁹ *Ibid* at para 63.

²⁰ *Ibid* at para 122-124.

²¹ *Ibid* at para 130.

²² *Ibid* at para 65.

²³ *Ibid* at para 49-60.

²⁴ *Ibid* at para 51.

more psychologically, and society places an emphasis on youth rehabilitating as quickly as possible.²⁵ These are among a plethora of reasons as to why the majority indicated that youth are tried under a separate system and demonstrate why the reasonable length of time before trial for a youth should be analyzed separately. Even if a youth's age is taken into account when determining *Jordan*, it does not make sense to argue that this is enough because to do otherwise would spiral the justice system out of control. If youth should be tried separately due to factors such as periods of time being more critical to youth psychologically speaking or in their development and reintegration, then a separate analysis for youth is definitely in order.

Furthermore, we see that the justice system has not spiraled out of control due to a separate court system being present for youth. This seems to suggest that a separate ceiling of timeliness for youth would also not be unmanageable.

In *K.J.M.*, the majority decision of the Supreme Court of Canada that *Jordan* applies in cases involving youth is not in keeping with Parliament's objective to protect youth and expedite youth proceedings. While youth cases may still be expedited in practice post-*Jordan*, it is still necessary in my view to instead follow the dissent's lead and perform a proper separate analysis for youth cases.

²⁵ *Ibid* at para 52, 55.

LEGISLATION

Canadian Charter of Rights and Freedoms, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

JURISPRUDENCE

R. v Jordan, 2016 SCC 27.

R. v K.J.M., 2019 SCC 55.