

Citation: *R. v. C.C.*, 2022 YKTC 55

Date: 20220916  
Docket: 20-03522B  
20-03522C  
20-03522D  
Registry: Whitehorse

**YOUTH JUSTICE COURT OF YUKON**  
Before His Honour Judge Neal

REX

v.

C.C.

**Publication, broadcast or transmission of any information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.**

**Publication of information identifying the young person(s) charged under the *Youth Criminal Justice Act* is prohibited by s. 110(1) of that *Act*.**

**Publication of information that could identify the complainant or a witness is prohibited by s. 111(1) of the *Youth Criminal Justice Act*.**

Appearances:  
Melissa McKay  
Christiana Lavidas

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCE**

[1] NEAL T.C.J. (Oral): The matter is under the *Youth Criminal Justice Act*, S.C.

2002, c. 1 (“YCJA”). All the Informations relate to the accused, C.C.

[2] The two Informations I will deal with, first of all, are 20-03522B, Count 1; and the other one is 20-03522C, Count 3. I have also been provided with a Pre-Sentence

Report (“PSR”) that has been prepared in connection with C.C. as well as a s. 34 report under the *YCJA*, a psychological assessment and risk report (the “s. 34 report”).

[3] Helpfully, the parties filed an Agreed Statement of Facts, which has been entered as Exhibit 1 in these proceedings, and the document was filed on February 24, 2022. I will not read in all of the facts but will simply indicate that this is a serious matter involving the possession of child pornography and that the agreed facts can generally be stated as follows.

[4] C.C. had the child pornography on her iPad and iPhone. She had around 50 to 60 images and videos depicting child pornography on her devices. Some of the images showed the breasts and/or genitalia of teenage females under the age of 18 years, such as a close-up image of a female’s pubic area believed to be a female between 12 and 16 years old; a naked female standing up in front of a mirror with an exposed vagina and exposed breasts, female believed to be less than 16 years old; a female in the shower showing her breasts and hiding her nipples, female believed to be less than 18 years old; and a video of a naked female masturbating, female believed to be less than 18 years old. None of the images or videos depicting child pornography included females who appeared to be under the age of 12, and none of the images or videos depict females engaged in sexual activities with others.

[5] Although not in the agreed stated facts, I understand from submissions that it is also relevant that none of the child pornography appears to have been shared beyond possible exposure to some of the victims that have been referenced.

[6] The Crown's submissions are that a probation order is the most appropriate disposition in connection with the Youth Criminal Justice matters with the term of two years on the probation order. The Crown submits that a two-year order with appropriate conditions is the correct disposition, as this is a serious case involving significant child pornography involving several victims over an extended period of time. Crown further submits that the evidence suggests that C.C. was seeking opportunities to acquire more pornography from other young girls.

[7] Crown submits further that C.C. exhibited no remorse and no insight into her offending. The Crown further submits that since the original charges, C.C. had accumulated seven breach charges awaiting disposition, all relating to breaches of no-contact provisions contained in the release terms that governed C.C.'s conduct in the community. Crown also notes, as a result of a section of the s. 34 report, that C.C. herself has admitted that reoffending remains a possibility, although minor, and still expresses an interest in young girls. Crown's argument is that this was an extremely concerning case warranting the supervision of efforts to rehabilitate C.C.

[8] Specifically, with relation to the s. 34 report, the Crown notes that on page 4 the father reports of his need to regularly remind his daughter of legal problems that have arisen from her activities so that she would not do it again, and furthermore, a report that the father did not believe that C.C. was genuinely remorseful or understood the actions and significance of the same.

[9] Crown referenced as well page 7 of the same report confirming that C.C. still dates age-inappropriate young girls much younger than herself, and that included a

co-worker at one point. Crown submits that is quite alarming, as C.C., as an adult, was pursuing girls in Grade 9 or 10.

[10] When asked if she had done any harm, the Crown notes that C.C. responded that although the victims may have been scared, she had done no harm. The Crown concludes that the court processes themselves had not been impactful to this point in changing the behaviour of C.C.

[11] In terms of the PSR, the Crown notes that at page 4 the author indicated that it was his perspective that C.C. had no insight that she had done anything wrong, and again, at page 5, that she lacked insight into the harm that she had caused to victims.

[12] Several decisions were referenced by counsel and, in particular, the Crown noted the Supreme Court of Canada decision in *R. v. Friesen*, 2020 SCC 9. While that decision, of course, is directly applicable only to adult offenders and not subject to the YCJA, the Crown submission is that the case provides important insights into the seriousness of child pornography in modern society. Crown submits that the possession of such pornography by any person is an act of violence, given the long-term and extensive harm to children as victims which are described comprehensively in *Friesen*.

[13] In terms of the defence, counsel for C.C. submits that the proper disposition is a condition sentence on terms that support the rehabilitation of C.C. The submission is that this is more appropriate as the shorter time period of the conditional discharge youth record accessibility under s. 119 of the YCJA, benefits C.C. Counsel submits that this may have importance to her if she wishes to travel at some later date.

[14] Counsel further submits that contrary to Crown submissions, C.C. should be accorded access to Internet and social media subject to parental controls and access to all C.C.'s accounts. Counsel also notes that the principles of sentencing under the YCJA require the least restrictive measures to ensure accountability and C.C.'s rehabilitative needs.

[15] With respect to the s. 34 report, counsel notes at page 26, third paragraph, that it is not that C.C. has not shown any remorse, it is just that she had qualified it in the manner referenced earlier. In terms of moral culpability, counsel notes that C.C. did not appear to realize that it was an offence to possess child pornography, as noted at the top of page 26 of the s. 34 report. It appears that she may not have realized at the outset that possession of child pornography was a criminal offence, and certainly not a very serious criminal offence.

[16] Counsel reinforces the fact that the images possessed by C.C. do not depict sex acts with young women and any other persons. It is the submission of counsel that the s. 34 pre-sentence reports are not all negative, that C.C. did attend for four months of counselling in 2021, however, frankly acknowledges that C.C. still continued to offend through breaches thereafter.

[17] Counsel confirms that C.C. is prepared to follow a court order arising from dispositions today and she will be working with the same counselling staff she had seen earlier if so ordered. It is acknowledged, however, that spending an evening in jail earlier in February had a salutary effect on C.C. and that that has convinced her of the seriousness of issues involving child pornography and the need to obey court orders. It

is noteworthy that there do not appear to have been any breaches since that time spent briefly in custody.

[18] Again, the submission of counsel is that the principles of the *YCJA* can be met with a conditional discharge, and if the offender, of course, has entered a guilty plea, taking accountability for her actions.

[19] The purpose of youth sentences is to hold young persons accountable by imposing sanctions that have meaningful consequences for them and that promote their rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public. A key principle of youth sentencing is that the sentence must, of course, be proportionate to the seriousness of the offence and the degree of responsibility of the young person. In other words, the sentence should fit the seriousness of the crime and take into account the maturity of the young person involved and the conditions under which the crime was committed.

[20] Furthermore, the *YCJA* also requires that a proportionate sentence be the least restrictive alternative capable of achieving the purposes of sentencing and the option most likely to rehabilitate and reintegrate the young person. It must promote a sense of responsibility in the young person as well as an acknowledgment of the harm done. A sentence may also include the objectives of denouncing the criminal behaviour and deterring the young person from committing further offences.

[21] Finally, I note that there were victim impact statements sought by the Crown; however, none were returned and as such do not form part of the consideration here today.

[22] In terms of the mitigating factors relevant to sentencing, there of course is a guilty plea. The accused has no prior criminal record. And importantly, the s. 34 report confirms at page 28 that C.C. has a cognitive function in the well below low average range and appears to struggle still with cognitive deficits.

[23] In terms of the aggravating factors, the offences before the Court relating to child pornography, possession of child pornography are extremely serious matters under any circumstances. Although C.C. has entered guilty pleas, there have been seven breaches alleged since the date of the initial charges with respect to the no-contact provisions of her release. The no-contact provisions were obviously included to protect vulnerable persons who had earlier been approached by C.C. A single transgression may have been explained by a failure to understand those release terms; however, seven such breaches leads to the inevitable conclusion that court orders have had little meaning for C.C., a serious aggravating factor.

[24] In the s. 34 report, C.C. self-reported a 20% possibility of the possession of child pornography reoccurring again, which is again a serious aggravating factor. This reflects an apparent lack of insight into the offences, the impact of those offences on victims, and the lack of genuine empathy and remorse associated with such persons and the situation that they have been exposed to. The lack of genuine insight into the seriousness of these offences is, again, a serious aggravating factor.

[25] In relation to all of the foregoing, it is relevant to note in the conclusion at page 28 of the s. 34 report:

Research indicates that the overall recidivism rates for adolescent sexual offending is lower than general/violent recidivism rates, and with the appropriate effective treatment interventions even lower still. [C.C.]'s risk for further sexual offending appears in the **LOW-MODERATE range at the time of this assessment if no efforts are made to manage her risk**. Her sexually inappropriate behaviour is likely related to access and opportunity with victims, her cognitive and emotional deficits, lack of social skills on how to get her needs met in a healthy way, her lack of knowledge around healthy sexuality, her lack of understanding how her feelings and thoughts affect her actions.

The prognosis is good that this young person's risk can be successfully managed by increasing knowledge around healthy sexuality, helping to become more in touch with her feelings and thoughts, working on attachment issues, emotional regulation, sexual regulation, self-esteem, and social skills training.

[C.C.] would benefit from moderate intensity psycho-educational interventions around relationships and boundaries, attachment styles, social skills training and emotion regulation. She appears motivated to stay out of trouble with the law. She shows some consideration for the victims and feels the consequences to her (official and otherwise) have been meaningful and salient. She has limited insight into her behaviour and would benefit from engaging in insight-oriented activities such as examining her thoughts and attitudes.

[26] The conclusion of the foregoing mitigating and aggravating circumstances is that there is hope for successful rehabilitation of C.C. with structured controls and programs, effective monitoring, and treatment. The sentencing objective here must therefore be to ensure that C.C. understands clearly the significance of her pattern of offending and to clearly denounce the same. Coupled with that is an equally important goal of ensuring rehabilitation for C.C.



[27] On the issue of a probation order or conditional discharge, I am not satisfied defence has laid the case for discharge. The equivocal and muted remorse of C.C. is far from genuine or sincere. Similar concerns extend to her genuine insight into the significance of her offending and the effect of possessing and storing child pornography on electronic devices and the effect that might have on the victims and other vulnerable young women. A small delay in achieving a clear record of offending under the YCJA is not a significant issue given the nature of the offences before the Court and C.C.'s response to these proceedings.

[28] C.C. will therefore be placed on probation for a period of two years concurrent on Count 1, Information 20-03522B, and Count 3, Information 20-03522C.

[29] The terms will be to:

1. Keep the peace and be of good behaviour;
2. Report to court as and when required;
3. Report within two business days to a Youth Probation Officer here in Whitehorse, and thereafter, as and when and in the manner directed by the Youth Probation Officer;
4. Reside where directed by the Youth Probation Officer and not change that residence without the written approval of the Youth Probation Officer;
5. Notify the Youth Probation Officer of any change in employment or training;

6. Attend specialized treatment, including forensic treatment, as recommended in recommendation 2 of the s. 34 report;
7. Attend counselling as directed by the Youth Probation Officer and consent to the release of information associated with that counselling to that Officer;
8. Have no contact directly or indirectly with persons under the age of 16 except in the company of an adult approved by the Youth Probation Officer in writing;

[30] With respect to access to social media, I am mindful of the caution from the author of the s. 34 report that such access may foster reoffending. However, I am also mindful that the reality is that access is a fundamental part of civil society. A complete restriction for two years would be severe and likely unworkable.

9. I have decided that a complete denial of access to Internet or social media, unless authorized in writing by the Youth Probation Officer, is appropriate on terms specified by the Youth Probation Officer. That is to include a specific designation of devices C.C. is authorized to access from time to time and time frames that she may use such devices;

[31] In this way, I am hoping that C.C. will have limited access to social media that is supervised and controlled.

10. C.C. will be required to consent to provide access to any social media accounts to which she has access or control and provide that information

to her Youth Probation Officer. The Youth Probation Officer will impose such monitoring and control access limitations to C.C.'s social media accounts and devices as considered appropriate; and

11. There will be a condition that C.C. will have no contact and not attend any residence or place of employment or education for any of the victims detailed in the earlier release orders. That is R.F., S.D., A.A., F.V., K.B.

[32] Given that the offence before the Court is a serious matter, the defendant will provide a DNA sample within seven days where and when designated by the Youth Probation Officer.

[33] Forfeiture of the devices seized in connection with this matter is ordered.

[34] I have decided that it is not necessarily desirable to impose a weapons prohibition under s. 109 of the *Criminal Code*. I do not believe such restriction is necessary on the facts of this case.

[35] I take it the remaining two counts on the Informations are stayed.

[36] MS. MCKAY: Yes, Your Honour.

[37] THE COURT: On the adult matter, I note the same submissions and apply the same reasoning in connection with my disposition on that matter. There are two counts on that to which she has a guilty plea. Is that correct?

[38] MS. LAVIDAS: Yes, that's right.

[39] THE COURT: Concurrent on both counts. So, on Information 20-03522D, a suspended sentence and probation for two years.

[40] Terms will simply be that you:

1. Keep the peace and be of good behaviour;
2. Report to court as and when required; and
3. Have no contact on the same terms as the disposition under the *Youth Criminal Justice Act*.

[41] The victim surcharge is waived.

[42] Again, that probation sentence will obviously operate concurrent with the one under the YCJA.

[43] Any questions?

[44] MS. LAVIDAS: I just want to clarify the conditions on the youth order. You are referring to social media specifically, which means that she can access the Internet for school purposes and that sort of thing?

[45] THE COURT: She can use the devices. I may have put it inelegantly and thank you for clarifying that. The device that she is available to use will be approved by the Youth Probation Officer. The access to that device on the Internet and any social media accounts will be approved and controlled by the Youth Probation Officer. The Youth Probation Officer will designate what she can get into and monitor what she gets into. I am expecting that the Youth Probation Officer will impose parental controls on that

device. As that changes, that experience changes over the two years, I am hoping the Youth Probation Officer will become more liberal in the application of that as C.C. shows that she is capable of maintaining appropriate restrictions.

[46] MS. LAVIDAS: Thank you, Your Honour.

[47] THE COURT: Any questions?

[48] MS. MCKAY: No questions, Your Honour. And I would just say for the adult Information as well the remaining two counts will be stayed as well.

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NEAL T.C.J.