

Citation: *R. v. B.L.*, 2008 YKYC 9

Date : 20080930
Docket: 07-11708
Registry: Dawson City

IN THE YOUTH JUSTICE COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

R e g i n a

v.

B.L.

Publication of identifying information is prohibited by section 110(1) or 111(1) of the *Youth Criminal Justice Act*.

Appearances:

Eric Marcoux

Nils Clarke (acting for James Van Wart)

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

A. Introduction:

[1] B.L. entered a plea of guilty to a single count of criminal negligence causing bodily harm contrary to section 221 of the *Criminal Code*, relating to an explosion in Dawson City, which was caused by the actions of B.L. and three young adults, Andie Levesque, James Gattie and Seamus Power. The four young men were the subject of a lengthy sentencing hearing on August 6, 2008. At that time, I passed sentence, but reserved reasons.

[2] These are my reasons for placing B.L. on a probation order for a period of 12 months on the conditions set out in that order and attached hereto as Appendix A. These reasons should be read in conjunction with the companion decision setting out my reasons for sentencing with respect to Mr. Levesque, Mr.

Gattie and Mr. Power, which includes a much fuller description of the facts and surrounding circumstances.

B. Facts:

[3] At an outdoor party on July 14, 2007, B.L. and the three young adults tried to make a “cannon” by filling an old pipe with gunpowder and placing it in the bonfire, hoping to launch a rock across the Yukon River. The ill-advised plan went horribly wrong with the pipe exploding and seriously injuring three people, including B.L., whose injured leg has already required two surgeries and will require ongoing treatment.

C. Background Circumstances of B.L.:

[4] I have had the benefit of a comprehensive pre-sentence report detailing B.L.’s personal circumstances.

[5] B.L. was born September 28, 1990 and raised in the Whitehorse area. Of note, his parents divorced in 2006. He has opted not to reside with either parent, stating that he does not get along with his mother’s partner and finds his father’s residence too small. Instead, he has been residing on his own for the past year, primarily in Dawson City where he relied on friends for accommodations until moving into the Bunkhouse. He does keep in touch with his family by phone, but appears to see them rarely.

[6] In terms of education, B.L. has attended the Individual Learning Centre, taking grade 11 and 12 courses, for the past year. He plans to return to F.H. Collins to obtain his diploma, as a G.E.D. would be insufficient for him to pursue a career as a music technician. Such a pursuit will require some changes in both attitude and effort, as he has, in the past, maintained only a C average while conceding that he could do better if he applied himself more. In addition, he has been suspended for fighting in the past and has been known to skip school due to boredom and conflicts with his teachers. The pre-sentence report also notes

that he has demonstrated little motivation in actually pursuing his plans of returning to school.

[7] With respect to employment, while I was advised at the sentencing hearing that B.L. was working at the Bunkhouse with a possibility of working in the kitchen at the Eldorado, the pre-sentence report details an inconsistent employment history, noting two very short-term positions, one for which he was not called back after a couple of shifts and one which he quit after just a couple of weeks due to a disagreement with other employees.

[8] Also of concern, B.L. has consistently used both alcohol and marijuana since the age of 15. It should be noted that alcohol was a factor in the offence before me, and both alcohol and drugs have brought him to the attention of the authorities on other occasions, although he comes before me with no prior criminal convictions.

[9] Overall, there are clearly concerns about the level of structure, supervision and stability in B.L.'s life.

D. Victim and Community Impact:

[10] The victim and community impact are set out in more detail in the companion decision. For the purposes of these reasons, it is important to reiterate that B.L. participated in a Victim/Offender Resolution Conference organized by the Dawson Community Group Conferencing Society ("DCGCS"). To his credit, when asked at the Conference whether he felt he should be subject to lesser consequences by virtue of his youth, he replied that he should be subject to the same conditions as his adult companions.

[11] The Conference resulted in the following recommendations for B.L. to complete:

1. To complete personalized letters of apology to the City of Dawson Nursing Station, the Ambulance crew, Dr. Susan Alton, the parents of the four co-

- accused, RCMP members in Dawson City, and Lisa Perry within six weeks;
2. To complete 80 hours of community work service hours which could include volunteering to collect video games for the University of Alberta Children's Hospital and working on the developing skate board park within six months;
 3. To participate in the Liquor Ticket program provided by the Youth Achievement Centre, completion date will be determined by program availability; and
 4. To donate \$100 to the Yukon Foundation for the Matthew Webster Memorial Trade Scholarship within six weeks.

E. Response to Community Recommendations:

[12] Between the Conference and the sentencing hearing, B.L. had plenty of time to demonstrate his sincerity and commitment to making reparations to the community for his actions. Unfortunately, his efforts have been somewhat disappointing.

[13] He did complete all but one of the required apology letters, but has made no effort towards paying the donation. Furthermore and perhaps most notably, his response to the expected community service hours has been decidedly unimpressive, denoting a lack of respect for the community's wishes. He has failed to show for a number of scheduled work sessions, and has attended late or required a phone reminder for others. No excuse or explanation was offered to the court for this lack of compliance, though the pre-sentence report seems to indicate deliberate defiance of expectations rather than inattention or forgetfulness:

B.L. has participated as asked however has expressed frustration to the hours he is expected to work and has attempted to negotiate later start times. When the times have not changed to accommodate B.L.'s schedule he has either not attended or has shown up later than agreed.
(page 3)

[14] The pre-sentence report goes on to raise concerns about the effort B.L. puts in when he does attend to complete hours:

When he is working the feedback from the people supervising has been that the work is haphazard. He is not seen as consistently putting in full

effort. He was described as feeding into negative comments when he is with his co-accused for work projects, however B.L. feels that his efforts have not been fully recognized and understands that he has not been fully committed to the work. (page 3)

[15] My concerns with respect to B.L.'s attitude and effort are offset somewhat by the recognition that he has already suffered repercussions for his actions through the serious injuries he received and the ongoing care he will require.

F. Position of the Parties:

[16] In light of B.L.'s age, Crown suggested a probationary disposition, while B.L.'s counsel argued for a conditional discharge of six to 12 months.

[17] As noted above, I concluded that the principles set out in section 3 of the *Youth Criminal Justice Act*, when viewed in light of the circumstances of this offence and this young person, are best met by the imposition of a 12 month term of probation.

G. Applicable Principles of Sentencing:

Rehabilitation and Reintegration:

[18] A review of the pre-sentence report presents a picture of a young man who, while quite fiercely independent, lacks focus, motivation and direction. I am of the view that emphasizing and encouraging B.L.'s rehabilitation and reintegration into the community require the imposition, through conditions, of the structure, supervision and stability which are lacking in his current circumstances. I am equally satisfied that this is best achieved with the conditions as set out in B.L.'s probation order attached as Appendix A.

Fair and Proportionate:

[19] Section 3(1)(b)(ii) of the *Youth Criminal Justice Act* requires emphasis on "fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity".

[20] This then raises the question of whether B.L. ought to receive a lesser sentence than that received by his adult companions. In considering this issue, I note the three adults involved, while not young persons, are certainly still youthful offenders. I note also that the offence was one which demonstrated a degree of immaturity on the part of all four young men, a factor which was significant in my reaching the conclusion that the adult co-accused need not be subjected to a jail term, conditional or otherwise.

[21] In my view, there is not a significant difference between B.L. and his adult co-accused in terms of actual level of maturity; however, there is a difference in law as to how they should be treated. All things being equal, B.L.'s sentence should be somewhat shorter to reflect that legal difference. However, things are not wholly equal between the four young men. B.L. had the poorest performance in response to the community recommendations. This led me to conclude that a somewhat longer period of structure and stability was required for B.L. to address both rehabilitation, as discussed above, and to encourage reparations to the community, as will be discussed below.

Reinforce Respect for Societal Values and Encourage Reparations:

[22] This offence had a profound impact on the community of Dawson City and on those present at the time of the offence, in particular, Ms. Perry who suffered serious injuries with potentially permanent loss of sensation in her hand. In these unique circumstances, the dominant sentencing principles in my view must be those set out in sections 3(1)(c)(i) and (ii), which require that the measures taken against a young person "reinforce respect for societal values" and "encourage the repair of harm done to victims and the community".

[23] Unfortunately, B.L.'s response to the community recommendations to date has not demonstrated either a respect for societal values or a sincere commitment to making reparations to the community. While I might otherwise have considered a shorter term of probation for B.L. in comparison to his adult

companions, his less than impressive efforts, particularly with respect to the required community service work, persuaded me that a lengthier and more structured term was necessary to encourage B.L. to fully accept responsibility for his actions and to respect the community's wishes by making a sincere effort to comply with the spirit as well as the technical requirements of the community recommendations.

H. Conditional Discharge:

[24] In the companion decision, I determined that a conditional discharge would be contrary to the public interest given the nature and seriousness of the offence and its consequences. Those reasons are equally applicable to B.L. and are incorporated herein by reference.

I. Firearms Prohibition:

[25] Similarly, I concluded in the companion decision that the mandatory firearms provisions apply in the circumstances of this case. Again, I adopt my reasoning and my conclusion by reference. However, as B.L. is a youth, the length of the prohibition is determined by virtue of section 52 of the *Youth Criminal Justice Act* which sets the applicable period at two years. Accordingly, B.L. is hereby prohibited from possessing any firearm, ammunition or explosive substance for a period of two years from the date of conviction.

J. Appropriate Disposition:

[26] Having considered the circumstances of the offence and of B.L., I am satisfied that a 12 month term of probation with terms addressing rehabilitation and incorporating the recommendations of the community is the disposition which most appropriately meets the principles set out in the *Youth Criminal Justice Act*.

Ruddy C.J.T.C.



In the Youth Justice Court of Yukon
Tribunal pour adolescents de Territoire du Yukon

PROBATION ORDER
Ordonnance de probation

CANADA
YUKON TERRITORY
Territoire du Yukon

Form 6.1
Subsection 42(2)(k)
Formule 6.1, paragraphe 42(2) alinea k)

Police File No: 2007-802390
Court File No: 07-11708
Date of Birth: 28Sep1990

On August 6th, 2008, in the Youth Justice Court, at Dawson City in the Yukon Territory, Her Honour Chief Judge K. Ruddy found B [REDACTED] L [REDACTED] of Whitehorse, Yukon Territory, following his own admission, guilty of the following offences:

Le {date}, je (nom du juge) juge du Tribunal pour adolescents a (adresse), ai declare coupable (nom de l'adolescent), (adresse), (a la suite de son plaidoyer de culpabilite ou de son proces), de l'infraction ou des infraction(s) suivante(s) :

COUNT #2 On or about the 14th day of July, 2007, at or near Dawson City, Yukon Territory, did unlawfully commit an offence in that : he did by criminal negligence, to wit : cause an explosion, cause bodily harm to Lisa PERRY, contrary to Section 221 of the Criminal Code.

Having considered the purpose and the principles of sentencing as set out in Section 38 and the restrictions on custody set out in Section 39 of the Act, Her Honour Chief Judge K. Ruddy imposed the following sentence on B [REDACTED] L [REDACTED].

Ayant considere: le (date), j'ai impose (nom de l'adolescent) la peine specifique suivante: (indiquer la ou les sanctions imposee(s) en vous referant a la liste qui suit) (Date a laquelle l'ordonnance a ete rendue), (Lieu o l'ordonnance a ete rendue)

On August 6th, 2008, the Court imposed a sanction on B [REDACTED] L [REDACTED] under section 42(2)(k) by ordering that he be placed on probation for a period of TWELVE (12) MONTHS, subject to the following conditions:

Le {date}, j'ai impose a {nom de l'adolescent}, en vertu de l'alinéa 42(2)k,) une probation pour une periode de {jours/mois/annees} assortie des conditions suivantes, {qu'il ou qu'elle} ne trouble pas l'ordre public et ait une bonne conduite; {qu'il ou qu'elle} reponde aux convocations du tribunal.

- (1) Keep the peace and be of good behaviour;
- (2) Appear before the youth justice court when required by the court to do so.
- (3) Report immediately to and be supervised by a Youth Worker and thereafter when in the manner directed
- (4) Notify the Youth Worker assigned to the case of any change of address or any change in the young person's place of employment, education or training;
- (5) Remain within the territorial jurisdiction unless you have the permission of your Youth Worker.
- (6) Make reasonable efforts to obtain and maintain suitable employment;
- (7) You must not possess or consume alcohol (or use drugs for non-medical purposes) except by a qualified medical practitioner;
- (8) You must take such alcohol, drug or substance abuse assessment, counselling and treatment as directed by the Youth Worker;
- (9) You must take such other assessment, treatment and counselling as directed by the Youth Worker;
- (10) Not attend any bar, tavern, off-sales, including Gertie's or other commercial premises whose primary purpose is the sale of alcohol;
- (11) Provide your Youth Worker with consents to release information with regard to your participation in any programming , counselling, employment or educational activities that you have been directed to do pursuant to this Probation Order.
- (12) Perform EIGHTY(80) hours of community service as directed by your Youth Worker or such other person as your Youth Worker may designate. This community service is to be completed within FOUR (4) MONTHS. The Youth Worker may apply hours already completed against your total.
- (13) Participate in at least ONE (1) presentation at Robert Service School as directed by your Youth Worker.
- (14) Pay to Dawson City Group Conferencing Committee ONE HUNDRED DOLLARS (\$100.00) in trust for the Matthew Webster Memorial Foundation. *within 30 days.*

- (15) Write a letter of apology to Brent LEMOINE within 30 days;
- (16) Appear for a review of this Probation Order on October 7, 2008, at 2 :00 PM in Dawson City, Yukon Territory.

Young Person's Acknowledgement:

I, B L, of Whitehorse, Yukon Territory, am the young person referred to in this Probation Order. I acknowledge that I have read or have had read to me the Probation Order. (Young Person to initial)

- bl I have received a copy of the Probation Order. The purpose of the Probation Order and how it works has been explained to me.
- bl I understand that I must obey the Probation Order and its conditions.
- bl I understand the conditions of the Probation Order.
- bl I understand that I can ask the court for a change in the conditions of the Probation Order six months after it was made, or earlier with the permission of the court.
- bl I have been told and I understand that if I do not keep all the conditions in this Probation Order, I can be charged with a summary offence under section 136 of the Youth Criminal Justice Act.

DATED this 6th day of August, 2008, at Dawson City, in the Yukon Territory

[Signature]
Young person

Signature of parent or guardian (if present)
[Signature]
Clerk of the Youth Justice Court

Attestation de l'adolescent:

Je, (nom de l'adolescent), de (lieu), suis l'adolescent(e) visé(e) par cette ordonnance de probation. J'atteste avoir lu cette ordonnance ou qu'on m'en ait fait la lecture. (l'adolescent appose ses initiales)

- _____ Je comprends que je peux demander au tribunal qu'il modifie les conditions de l'ordonnance de probation six mois apres que celle-ci ait ete rendue ou avant, si le tribunal l'autorise.
- _____ On m'a explique et je comprends que, si je ne respecte pas toutes les conditions de cette ordonnance de probation, je peux etre accuse d'une infraction punissable par procedure sommaire en vertu de l'article 136 de la Loi sur le systeme de justice penale pour les adolescents.
- _____ J'ai retu copie de l'ordonnance de probation.
- _____ Le but et les effets de l'ordonnance de probation m'ont ete expliques.
- _____ Je comprends que je dois me conformer a l'ordonnance de probation et en respecter les conditions.
- _____ Je comprends les conditions de l'ordonnance de probation.

{Date}{Lieu}

_____ l'adolescent

_____ Le parent ou tuteur de l'adolescent(est present)

_____ Greffiere du la tribunal pour adolescents