

Citation: *R. v. D.A.G.*, 2008 YKYC 11

Date: 20081030  
Docket: 08-03513  
07-03584  
Registry: Whitehorse

**IN THE YOUTH JUSTICE COURT OF YUKON**

Before: His Honour Judge Cozens

REGINA

v.

D.A.G.

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

Appearances:  
David McWhinnie  
Stephanie Schorr  
Nils Clarke

Appearing for Crown  
Appearing for the Provincial Director  
Appearing for Defence

**REASONS FOR SENTENCING**

[1] COZENS T.C.J. (Oral): Mr. G. has entered guilty pleas to several offences: a 334(b) offence, two 348.1(b) offences, and a 430(4). He was also found guilty after trial on a 344 charge.

[2] The circumstances of the offences are that on or about the 29th day of August 2007, there was a break and enter at the Youth Achievement Centre. The charge is a 334, and Mr. G. stole \$362 out of the safe that was there. He knew the Youth Achievement Centre. He knew where the money was kept. This money was not recovered.

[3] Police were conducting an investigation into something else, noted there were several unsolved property offences, noted in an unrelated investigation that Mr. G.'s shoes seemed to have the same treadwear as some of the prints they had found at these other locations. As a result of confronting Mr. G. with this, he, basically, from the Young Offender's facility, went on sort of a re-creation and pointed out what he could remember in a very voluntary, very cooperative manner.

[4] What he showed them was that he accepted responsibility for a break and enter on August 31, 2007, into 708 Alexander Street. He and another individual went in through the rear with an intention to steal. Mr. G. went upstairs and took a backpack and a laptop. The other person that was with him went downstairs. Somehow this other person started a fire and that effectively destroyed the house and caused significant emotional and physical loss to the persons of the house. Mr. G. was not responsible for the fire; he had no intention to start it. It was the other person that appears to have started the fire, but he nonetheless was with this person and did take the two items from the upstairs.

[5] On or about the same time he went into 610 Ogilvie through a small window under a porch, took a small safe and a laptop computer, broke into the safe in a different location and took the contents. The insurance claim is in the area of about \$17,000. Again, a number of very significant personal items were taken during this break and enter.

[6] Then on September 13, 2007, he broke a window at 202 (sic) Lowe Street and entered, but an alarm went off and he left the residence and did not take anything.

[7] As indicated, after trial he was convicted of a robbery that, boiled down to its barest facts, in somewhat of a spontaneous situation, he punched a 14-year-old male, T.S., and took his IPod, and the other person that was with Mr. G. took Mr. S.'s hat.

[8] Mr. G. has a criminal record. It is all a youth record. He is 18 years old now but that is only as of August the 25th of this year. He has been in custody since June 14th of this year. He has several offences of violence and several offences for break and enters. He has received intensive support and supervision orders. He has received custody and supervision orders.

[9] There are numerous pre-sentence reports that have been filed. Mr. G. has been subject to psychological assessments. We have reports filed. They are very detailed. I do not intend to go through them in any significant detail.

[10] Highlighting certain aspects of them; Mr. G was exposed to domestic violence from birth to approximately age 10. This was reported by his mother. These occurred primarily on Friday nights and usually when his parents were drinking. His father would get angry and on one occasion put Mr. G's head through a window after being angry, when Mr. G. was quite young. He demonstrated signs of insecure attachments very early on as an infant. He had temper issues.

[11] He seems to have gotten along very well with his one sister, but basically in 2001 he was subject to a temporary care and custody order that was extended a number of times, until 2004. Then a permanent order was granted and he has remained in permanent care since then. He has been at the Children's Receiving Home, the Residential Youth Treatment Services, Fireweed, and Ranch Ehrlo in Saskatchewan.

Eventually he was discharged early from Ranch Ehrlo because of difficulties he had there.

[12] There are a number of reports that demonstrate that Mr. G. has had difficulties, while in the custody of these facilities, in interacting with other individuals. He seems to possess the ability to do well, to achieve higher levels and get greater freedoms, and then gets into an altercation or dispute and ends up starting over again at a lower level.

[13] He clearly has, from all these reports, skills and talents athletically and artistically.

[14] Defence counsel has pointed out that he has met a number of times with Cathy Deacon, of the Youth High Risk Treatment Program, who appears to have spent perhaps more time in a one-on-one counselling role than anyone else has with Mr. G. This is something that he did voluntarily, as I understood it from defence counsel, when he agreed to continue to see Ms. Deacon. I am not saying it was all voluntary but certainly some of his time with her has been.

[15] Ms. Deacon has indicated, as defence counsel submitted in court, that:

He has some real strengths; he likes to be busy and [he] is usually meticulous in everything he does; he is kind and gentle with children and domesticated animals. He enjoys outdoor activities ... kayaking, canoeing, climbing, biking, skateboarding, snowboarding and skating. [D.] has a strong creative nature through art and his dedication to it is his greatest strength. He has a good sense of humour and a deep loyalty to his sister, brother-in-law and baby nephew.

These comments may not be what would come to the forefront of someone's mind that have perhaps been the victims of the crimes that Mr. G. is being sentenced for today.

That does not mean these attributes do not exist, it is just that sometimes the best sides of a person gets subsumed by the sides that are not so good. These offences today are indicative of the other troubles and the other struggles that Mr. G. deals with.

[16] A very extensive psychological report by Steve Sigmond was prepared previously. Again, I will not go through it in any length. It outlines a number of the historical situations that Mr. G. was in that put him in a situation that Mr. Sigmond calls a bit of a “diagnostic conundra.” There are indications of some things that he may be dealing with, but there are contra-indications.

It is evident from his presentation ... that he has no appreciation for consequences ... he cannot think ahead of any of his immediate impulses. He also does not appear to learn from consequences, simply repeating his behavioural tactics over and over again.

Now I note this is from July of 2006. It says there may be “possible underlying depression...post-traumatic stress disorder features.” But of particular significance is a paragraph that states:

There is a concern generated by this evaluation that if we are unable to impact on [D.]’s aggressive, defiant, and conduct disordered patterns, that he will by the time he reaches the age of 18, develop a fully formed antisocial personality disorder with subsequent predictable chronic conflict with the law well into his adult years. Unfortunately, [D.] has been resistant to any and all treatments.... It is clear again, that this youth even in a custodial situation and facing sanctions from the law cannot curtail his emotional and aggressive responses. It is therefore unlikely that he will be able to do so in a community setting, especially given the resources that are available in the Whitehorse area.

[17] So the protective factors Mr. Sigmond notes are most evident are:

...his love of work and sports. It may be a saving grace if he can be stabilized enough to avail himself of opportunities for work or vocational training, with some good recreational programming.

Much more is said in these reports that I will not repeat.

[18] The victim impact statements have made it very clear, with respect to the break-and-enters, the devastating impacts that have resulted on some of the individuals affected, and certainly some impacts cannot be understated, that going into someone's house and taking some physical items is not the extent of it. There is a lot more taken from a person than that. Even if it is physical items, some of them cannot be replaced. And there is still emotional instability and insecurity. These things need to be noted, and when dealing with dispositions of offences like this in a community where these offences are fairly prevalent, it is always mindful to remind young people in particular, who still have the ability and more time in front of them, to perhaps start to think about the consequences of their actions, to remind them of these consequences so they can think about them in future.

[19] The submissions of counsel, both counsel, are that there should be an additional four to six months in custody. Mr. G. has been in custody at the young offender's facility since June 14th, which is approximately four and a half months. Now, strictly speaking of course, how time is accredited to individuals under the *Youth Criminal Justice Act*, S.C. 2002, c. 1, is a little different than it is when it is an adult sentence for which there is generally, in this jurisdiction, one and a half to one credit because of the issue of statutory remissions. There is, of course, no statutory remission, for youth.

[20] There is an application before me from the Territorial Crown that Mr. G. serve the sentence that he gets in an adult facility. This application is not opposed. There is substantial material filed before me with respect to why he should serve any sentence that he gets in an adult facility. Strictly speaking, that is not a decision I can make until I impose sentence but I will say that in deciding the sentence that I am going to impose

today I take into account the fact that there is this application before me and that defence counsel is consenting to the application.

[21] I will say, without making the order at this point, that there is ample evidence to show that such an order would be in the public interest, but not just the public interest, I believe in Mr. G's interest as well. He has effectively probably exhausted all the usefulness of operating under sanctions available under the *Youth Criminal Justice Act* and the resources in the Yukon, and it is time, as he turns 18, that he steps out of that system and into another system that hopefully he will not step into again. That of course is an order that I am deferring until afterwards, but I have considered the fact that I will make that order afterwards, because on the evidence I have seen it seems appropriate.

[22] Defence counsel has also submitted that because of the principle that when a young person is going to an adult facility for the first time, there is a bit of a transition and a sentence can be reduced accordingly to take that into account. It is not a strict mathematical factor but it is certainly a factor if it is the first time a young person is going to be in an adult facility for any length of time.

[23] So in all of these circumstances, taking into account the four and a half months pre-trial custody, which I would, in the normal course, attribute as being seven months, taking into account that there would be approximately, I would have thought, about one month of a bit of a transition, that is about eight months that would have come out to, and reducing the sentence accordingly, giving Mr. G. all benefit for the guilty pleas on the property offences, offences for which, even with the footwear evidence they

uncovered, without his cooperation they would have been unlikely to have uncovered, there will be additional time in the form of a custody and supervision order, which is my jurisdiction under s. 42 of the *Youth Criminal Justice Act*.

[24] There will be an additional four months in custody which, effectively, giving him every benefit of the doubt, amounts to what would totally, in the normal course, be 12 months. How it will be broken down is that when I think of the eight months that I am effectively reducing this by, there would be another two months of that on the -- the four months will be reflected as being on the robbery and there will be concurrent time of six months on the -- well, sorry, the four-month custody and supervision order is on the robbery and I will make a concurrent time on the property offences. So it is going to - just because of the way we are dealing with it this way - as far as precedential value goes, the way this is broken down it is going to be fairly limited for sentencing purposes. So there will be an additional four months and concurrent four months on all the offences.

[25] There will be one year of probation to follow. I concur that this is the only way to reasonably facilitate Mr. G.'s integration into the community. The terms will be:

1. Keep the peace and be of good behaviour;
2. Appear before the Youth Justice Court where required by the Court to do so;
3. Report to and be supervised by the Provincial Director or a person designated by the Youth Justice Court;
4. Report immediately upon your release from custody to the Provincial Director or a person designated by the Youth Justice Court;

5. Reside as approved by your youth justice worker and not change that residence without the prior written permission of the youth justice worker;
6. For the first three months of this order, abide by a curfew by remaining within your place of residence between the hours of 11:00 p.m. and 7:00 a.m. daily except with the prior written permission of your youth justice worker. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition.
7. For the first three months of this order, abstain absolutely from the possession and consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
8. For the first three months of this order, not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;

That said, you are 18. I believe it is 19 here, so you are prohibited from doing that in any event.

9. Take such alcohol and drug assessment, counselling or programming as directed by your youth justice worker;

Is he willing to attend a residential treatment program if he is directed to do that? I mean, you know, if it is not something you have discussed or canvassed, then I will leave that.

10. Take such psychological assessment, counselling and programming as

directed by a youth justice worker;

11. Take such other assessment, counselling and programming as directed by your youth justice worker.
12. Have no contact, directly or indirectly, or communication in any way with T.S. --

I noted that one of the individuals had clearly indicated that desire. Given that the names are known now I would also order that no contact include:

-- Karen Purves, Laverne Rasmuson, Leonard Rasmuson, Clive Sparks;

13. Participate in such education or life skills programming as directed by your youth worker;
14. Make reasonable efforts to find and maintain suitable employment and provide your youth worker with all necessary details concerning your efforts;
15. 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 order.

[26] Those are all the terms of the order that we were seeking or are there more?

[27] MR. CLARKE: I think it's T.S., Your --

[28] THE COURT: T.S., thank you. There was another, T., that's right, in the trial.

[29] MR. MCWHINNIE: Given the relative ages of Mr. T.S. and Mr. G., it's not

unreasonable to suppose they might end up at something like a hockey game, or something like that together where -- would a bubble clause, not be knowingly within ten metres of him, might be a useful addition to that no-contact order?

[30] THE COURT: Split the no-contact into two: Straight no-contact with the other individuals that I have mentioned. With respect to T.S:

16. Have no contact, directly or indirectly, or communication in any way with T.S., except with the prior written permission of your youth worker in consultation with Victim Services;

17. Not be within 10 metres --

-- should be sufficient because that should accommodate any athletic event or any youth thing, 30 feet; I mean I would think.

-- except with prior written permission of your youth worker.

Well, just youth worker for that one. They may find out there is a youth event and the room is too small to have it any otherwise or something that he may be at. So there are three terms there. There is a straight no-contact. There is a no-contact with T.S. except with permission, and then there is a not to be within 10 metres of T.S. except with permission.

[31] Is that it for the terms of the order?

[32] There will be a DNA order. There will not be a firearms order made.

[33] So that does deal with everything? We need to deal with this: the Count 5 is being stayed?

[34] MR. MCWHINNIE: Yes.

[35] THE COURT: Now we come to the other application, and as I indicated in these Reasons, I have read all of the materials. The materials are extensive and they clearly set out a factual foundation that would indicate that it is in the public interest that Mr. G. serve his sentence in an adult facility. It is also, in my opinion, clearly in Mr. G.'s interest to do as well.

[36] So I will make the order that is being sought by the Territorial Government in this case. If I might just simply have a copy of the notice of application, Madam Clerk? That is simply it. There will be an order authorizing the Provincial Director to direct that Mr. G. serve the entirety of his youth sentence at Whitehorse Correctional Centre, a territorial correctional facility for adults.

[37] Victim fine surcharges, they do not apply to the youth sentences, correct?

[38] MR. MCWHINNIE: No.

[39] THE COURT: Okay. Does that conclude everything?

[40] MR. MCWHINNIE: It does.

[41] MS. SCHORR: Could the record be made an exhibit now?

[42] THE COURT: Make the record an exhibit. The artwork can go back.

[43] I had not mentioned on the application that obviously defence counsel was consenting to the application, probably observing exactly the same things that I saw in it.

[44] MR. CLARKE: That's correct, Your Honour.

[45] THE COURT: Okay. Thank you, counsel.

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COZENS T.C.J.