

YOUTH JUSTICE COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

J.V.P.

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

Publication of information that could identify the complainant or a witness is prohibited by section 111(1) of the *Youth Criminal Justice Act*. Check with the court registry for details.

Appearances:
Noel Sinclair
Melissa D. Atkinson

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] CHISHOLM J. (Oral): Firstly, I would like to address the family of B.V. who have attended this review.

[2] When J.P. was sentenced, I said that there really was no way to right this wrong and that there was no way to make things as they were. I cannot fully imagine the grief that the family experienced and continues to experience. There is no doubt that this grief will remain for a very long time. As M.J.M. set out in her letter to the Court, any

amount of jail time is probably not enough when you are part of the family of the victim. Whether it is five years or 10 years' punishment, as she said, or whether it was even longer, there is just no way to make this whole again.

[3] The choice that the Court had to make at the time of sentencing was either to place J.P. in an adult institution for a number of years with no possibility of probation when he walks back out on the street or put him in the situation where he is now. Sometimes it is forgotten that he has been in custody for almost three years. In fact, he has been in custody longer than three years because he was in custody for a number of months prior to being held in custody with respect to this crime. Not only has he been in custody for that period of time, but he is receiving very specialized treatment.

[4] I listened to the proceedings of the June 16, 2017 review. I was very impressed by what the Crown, Mr. Sinclair, indicated at the time. He said, "There has been an incredible change of direction that [J.P.] has made in his life." Mr. Sinclair stated, as well, in this regard that there has been "astounding progress." Now, the hope is that this progress continues.

[5] I have said this to J.P. already, but he has a long and difficult road ahead of him. He also has a certain responsibility to make sure that he lives his life to the fullest, in a positive way that will help others and not only himself. I think that is part of the debt that you, J.P., owe to society.

[6] There have been discussions all along, even in the original reports of Mr. Marshall and Dr. Pleydon, about the sentence that I decided to impose, based on all of the information available, namely an "intensive rehabilitative custody and supervision

sentence". In addition to the time that he spent in pre-sentence custody, just over a year, he was to spend another two years in custody. Depending on his progress, he would then be released under conditional supervision into the community.

[7] From the beginning, and the reports have mentioned this, the plan included four steps. Without going through each of these steps, one was reintegration, which was to follow intensive therapy. Reintegration is important, so that you are not taking somebody who has perhaps become "institutionalized", because he has lived in this somewhat unreal setting for a number of years, and place him back into the community and hope that he is going to succeed. Without reintegration, the chances that such a person is going to succeed are little to none, I would say, for most offenders.

[8] In this case, the reports outlined the possibility of moving J.P. from secure custody, where he now is, to open custody, which is a less restrictive form of custody. It is still custody; it does not allow a person to walk the streets by themselves. It does, however, give them a chance to become more comfortable with what is going to come later and to exercise some of the life skills that they might have learned over the course of the secure custody term to help make sure that this does not happen again, and that J.P. does not end up in custody again, and that there will not be another person harmed in the community.

[9] As voiced by Mr. Sinclair at the last proceeding, J.P. is aware of that and he is aware that, with these types of sentences, there are restrictions. It depends on the offender and it depends on how the offender is doing, but if the offender is doing very

well, as J.P. is, then an opportunity may be permitted to see how they do with lesser restrictions.

[10] I am sorry to learn that the family of the victim has not received much in the way of communication from the authorities. I do not place this at the feet, obviously, of Mr. Marshall or Dr. Pleydon or the Crown's office, but it is unfortunate that there has not been more communication. I think that that would have helped the victim's family. I hope that communication will increase going forward, as per the *Victims of Crime Act*.

[11] The decision to make today is whether to leave J.P. in secure custody for the next five months before receiving "conditional supervision", a form of supervision in the community, or to allow some lessening of restrictions. That is the question that needs to be addressed.

[12] Again, going back to what I said at the outset, I appreciate what M.J.M. has said in her statement. I suspect that for other family members and others in the community, there may be the feeling that justice has not been done.

[13] However, from my point of view, I believe that J.P. has received a sentence that is going to give him the best possibility of not reoffending and of becoming a productive citizen.

[14] I know that that will not satisfy some people. As I said earlier, this is a tragic loss that will never be made whole. But the task of a court, in addition to denouncing and trying to deter this type of conduct, as well as applying the principle of "retribution", a court's role is also to try to allow for rehabilitation so that J.P. can succeed.

[15] In my view, a move to open custody, which will be closely watched by the treatment team, is a way to ensure, to the best of our ability, that J.P. has a better chance of succeeding once he is back in the community.

[16] I know that, for the family and others, that may not seem to be adequate, but that is the difficult decision to be resolved today, and that is the decision that I am making.

[17] Obviously, the issue of my jurisdiction to move J.P. from secure to open custody is now resolved. Mr. Sinclair, as you have acknowledged, I have the ability to change the level of custody. I do so for the reasons that I have set out, because of J.P.'s engagement; because of the fact that he is actively participating in therapy, treatment, counselling, and programming; and because at every review that we have had, the reports back are, in my view, more positive. I agree with Mr. Sinclair's comments from the last review that we had, that J.P.'s progress is "astounding".

[18] When you get back into the community at some point J.P., it is essentially the "rubber meeting the road" and that is going to be the most difficult part for you. You have to stay away from the friends that you had previously. You have to stay away from alcohol. The conditions that I will impose in another five months may be fairly restrictive conditions because I want you to succeed.

[19] I want you to continue over the next five months, as well, to advance your progress, to continue to look inwards and figure out what it is that you need to do to continue to learn and to continue to become a productive citizen.

[20] I will order that a review be held, pursuant to s. 105(1) of the *Youth Criminal Justice Act*, at least one month prior to the commencement of the conditional supervision, pursuant to s. 34(2)(e), as indicated in Mr. Marshall's report.

[21] Again, I would ask that there be an enhanced level of communication between the responsible person who is, as set out in the legislation, the Director of Juvenile Justice, and the family of the victim, so that at least they are kept aware of where things are at, with respect to J.P. I believe that they are owed that, in all the circumstances.

[22] The date for the next review will be May 11, 2018, at 2:00 p.m.

CHISHOLM T.C.J.