Citation: *R. v. K. and S.,* 2012 YKYC 4

Date: 20120412
Docket: 11-03513
Registry: Whitehorse

YOUTH JUSTICE COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

K. and S.

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

Appearances:
Keith Parkkari — Counsel for the Crown
Malcolm Campbell — Counsel for the Defence

REASONS FOR SENTENCING

[1] K. has entered a guilty plea to the offence of arson contrary to s. 434 of the *Criminal Code* in relation to the fire she was involved in starting at the Canada Games Center ("CGC") on June 24, 2011. Another youth, S., has already plead guilty to a charge of arson and, on February 9, 2012, was sentenced for her role in starting the fire (***R.*** v. ***K. and S.***, 2012 YKYC 3), ("***S***.")

[2] The facts in relation to K.'s involvement in starting the fire are as follows. I note that there were some differences in the facts as presented to me in the sentencing

hearing of K. as compared to the sentencing hearing for S., however, I do not consider these differences to be of particular significance.

[3] In the evening of June 24, 2011, K., in the company of S. and an 11 year old youth, was in the area at the rear of the ATCO ice arena at the CGC. Together they were making forts out of the speed-skating mats. At one point both K. and S. took their lighters and lit one of the handles of a mat on fire. The 11 year old put this fire out with his hands. S. then told K. to light another handle on fire and K. did so. This handle ignited and the three youth fled the area. The mat was substantially on fire when the youth were running away from the scene.

[4] K. and the others ran past three fire alarms and numerous adults without taking any steps to alert anyone that there was a fire. While they were running away K. told the 11 year old not to tell anyone what they had done.

[5] CGC employees soon became aware of the fire but, despite their efforts, were unable to extinguish it as the flames were approximately 13 – 14 feet high by the time they attempted to do so.

[6] When K. was initially interviewed as a potential witness by an RCMP officer, K. stated that she saw a First Nations female in a blue cadet sweater leaving the area and getting into a blue car.

[7] K. and S. had the following text exchange:

K.: :o
S.: Ya.
S.: K…..?

K.: I just came from the police station and saw C…..
K.: Pls dont post that picture of us hugging I have bf
K.: Plzz
S.: wtf?
S.: He tell?
K.: whos hhe?
S.: Nothen
K.: Ha?
S.: I canno3 believe a native persin stared da fire!
K.: I know
S.: Ya
K.: Crazy
S.: Danm straight
K.: Lol
S.: Im going up to seethe cgc
S.: Its closed.. cops everywhere
K.: ….
S.: Sicurity cams burnt
K.: :)
S.: Stick to the native story.
K.: Will do
K.: Lol
S.: Dump ppl
K.: I know .when we get older we will party to celebrate
S.: Yell yea (I note that in S.'s sentencing hearing this was transcribed as "Hell yea")
K.: Hehe
K.: Lol

[8] When RCMP officers viewed the video surveillance tape the next day, they re-interviewed S. and the 11 year old who provided statements detailing their and K.'s involvement in starting the fire. K. subsequently attended at the police station with her parents where she was arrested and released on an Undertaking to a Peace Officer.

[9] The fire caused between five and seven million dollars damage to the CGC and resulted in the significant disruption of numerous recreational activities and business operations, some for an extended period of time. The negative impact upon the Whitehorse and Yukon community has been substantial.

Positions of Counsel

[10] Crown counsel submits that a period of probation of two years is the appropriate disposition. Counsel's submission is based on the principle of parity, noting that two years probation is the sentence S. received. In the sentencing hearing of S., Crown counsel submitted that a Deferred Custody and Supervision Order was the appropriate disposition. Defence counsel submitted that a probation order would be the appropriate disposition and this is the sentence S. received. Crown counsel submits that there is no significant distinction between the circumstances of K. that would justify a different sentence than that received by S. I note that Crown did not appeal the sentence given to S.

[11] Defence counsel submits that a judicial reprimand is the appropriate disposition for K., based primarily upon the circumstances of the offence and the offender. He submits that this was essentially a foolish action by kids that ended up going way beyond anything K. could have contemplated. He submits that there was no malice, intention, planning and no likelihood of re-offending by K., noting that she is genuinely remorseful for her role in starting the fire. He further submits that K., in particular being the younger of the two offenders, having turned 12 only weeks prior to the commission of the offense, has a lower degree of responsibility than S.

Victim Impact

[12] The only Victim Impact Statement ("VIS") filed was that provided by Art Manhire, Manager of Indoor Facilities at the CGC. Crown counsel did not attempt to file or have the Court review the VIS provided by Clive Sparks on behalf of the City of Whitehorse Fire department, based upon my decision in regard to the admissibility of this VIS in ***S***.

[13] I will repeat what is stated in paragraph 12 of ***S.*** in regard to Mr. Manhire's VIS:

> [12] … The VIS provided by Art Manhire, Manager of Indoor Facilities at the CGC, included the following comments:
>
> > The fire at the Canada Games Center has had a significant impact on our community. The community's sense of safety has been compromised. The members of the community are still very angry and hurt.
> > …
> >
> > It has taken five months to repair the physical damage to the facility. But, it will take a lot longer to repair the emotional impact the fire has had on our community. The focus of the CGC is to rebuild the confidence and community trust. It will be a recovery process for the whole community and the (City) facility staff.
> >
> > The total damage to the facility was $7,000,000.00 It took 5 months of full time construction, cleaning and testing to ensure the facility was safe to open to the public. As a result of the closure the Games Center, youth and sporting groups had to be relocated. Some of the programs were moved up to 7 times as a result of facility availability. The starting dates for seasonal user groups were delayed by a month and a half. The stress of the rebuild had an effect on staffing. As you can appreciate, several staff chose to resign from the facility as a result of the stress the fire created. This has left behind an even larger burden on the remaining staff members. It has an impact on the moral(e) [sic] and safety of all staff who worked during and after the fire.
>
> [13] Mr. Manhire cited specific examples of a mother who told staff that her children were having nightmares after the fire and adult facility users sitting with him and crying while talking about how the fire affected them. He noted that the facility provides services to over 300 user groups in addition to the 2000 individuals who attend daily.

Circumstances of K.

[14] A Pre-Sentence Report ("PSR") was prepared for the original sentencing date of January 19, 2012.

[15] K. is 12 years old, having turned 12 approximately four weeks prior to June 24, 2011. There is no information that, prior to this offence, K. was known to the RCMP as being involved in anti-social or criminal behaviour. She has resided in Whitehorse her entire life. Her parents separated when K. was very young and she has primarily resided with her mother since 2003. While there is disagreement between K.'s parents as to the extent of the roles each has played in K.'s life, it is clear that there has been parental involvement by both parents. There have been several Family and Children's Services ("F&CS") investigations in the early 2000's, instigated in each case by a parent having concerns about the other parent's parenting methods. All of these investigations were resolved by the parents being involved in attendance at support groups.

[16] Since the commission of this offence, there has been further involvement by F&CS to provide supports to K.'s family, with somewhat limited success, in part due to a measure of parental resistance to meeting together with Family Support Workers.

[17] The author of the PSR notes that K. has been "exposed to ongoing animosity between her parents since she was a baby. Some of the psychological affects this had on K. were noticed by officials at her school as early as the first grade".

[18] K. has been described by her school officials in the PSR as "being often disengaged in class and quite uncomfortable with teachers" although she "is observed to be quite extraverted with her peers in the school yard". K agrees with this appraisal

stating to the author of the PSR that she “does not like adults and does not like school”. It is apparent from the PSR that K. has been noted for years by school officials to at times choose to disengage and disassociate from her teachers and her surroundings in a manner described by a school counsellor as being sometimes reminiscent of individuals who have suffered trauma.

[19] K.’s academic performance is marked by underachievement as she possesses the intelligence to do much better but is considered to be unmotivated to learn and disinterested in being at school.

[20] I find these observations to be interesting, considering K.’s further comments to the author of the PSR that she “would like to graduate high school and plan for university within the next five (5) years….[and] would like to be a teacher”. The disconnect between K.’s current approach to school and her long-term goals, while not necessarily unusual given her age, is nonetheless a matter which K. should be encouraged to consider in hopes of her altering her current approach and bringing her actions more in line with her hopes.

[21] K. considers herself to be leader among certain groups of friends but a follower in other groups. No information is provided, however, that would provide further insight into the nature of the groups she is either a leader or follower in. She does not consider herself to have any close friends.

[22] K. admitted to the author of the PSR to having begun to consume alcohol and to having experimented with the use of illicit drugs in the past year, although it is not clear whether this includes the period of time prior to June 24, 2011.

[23] K. has no particular hobbies or interests and has had no involvement in any kind of sport since she lost interest at the age of 10.

[24] K. has low self-esteem, telling the author of the PSR that she does not believe she is a good person, in fact she is a bad person for having started the fire, and she cannot think of a single positive attribute she possesses.

[25] In discussing K.'s thoughts regarding the impact of her actions in the fire at the CGC, the author of the PSR notes that K. recognizes that the community lost access to the CGC following the fire and that many employees of the CGC and the businesses within it were unable to make money during the temporary closure. K. feels that this likely hurt the employees and made the public very angry, and that they are likely still upset. K. stated that she felt very bad for having committed this offence and would like to try to make it up through paying money, apologizing and doing work for those affected.

[26] When addressing the court during the sentencing hearing, K. reiterated her regret for her actions, stating that what she did was wrong, she wishes she had not done it and she recognizes that someone could have been hurt. She stated that she should have told someone after the fire had been started.

[27] An assessment of K.'s risks and needs in the PSR identified parental conflict between K. and each parent, and inconsistent parenting as raising concerns regarding controlling K.'s behaviour. Her low educational achievement is because of her disinterest and not from a lack of intelligence. Her peer group includes individuals who participate in criminal activity. K.'s remorse is considered to be more linked to the social and peer group consequences on her than on moral reasoning (although I note that we are dealing with a 12 year old whose ability to fully appreciate the consequences and wrongness of her actions may well be somewhat limited as a result of her youth). K. has little interest or involvement in any pro-social recreational activities, is reluctant to accept non-mandated support, is somewhat defiant to authority if she can avoid detection and has "an alarming low level of concern for others – particularly of those whom she does not like or does not know personally". I note, however, in regard to the last point, that the author of the PSR also writes that "K. appreciates the seriousness of her crime and understands the impact it has had on the community at large. She is painfully aware of the negative sentiment the community has towards the individuals responsible for the Canada Games centre fire and she very much misses being allowed to attend there".

[28] As result of substance abuse screening, K. is considered to be at need for further assessment regarding her substance use.

[29] K. has reported as directed under the term of her undertaking and has been substantially compliant with the conditions imposed on her, with the exception of two relatively minor incidents fairly soon after she was first placed on the undertaking. She is noted as having been respectful, albeit quite guarded in her communications.

Youth Criminal Justice Act ("YCJA")

[30] The following Declaration of Principle is set out in section 3 of the *YCJA*:

> **3.** (1) The following principles apply in this Act:
>
> (*a*) the youth criminal justice system is intended to
>
> (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour,
>
> (ii) rehabilitate young persons who commit offences and reintegrate them into society, and
>
> (iii) ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public;
>
> (*b*) the criminal justice system for young persons must be separate from that of adults and emphasize the following:
>
> (i) rehabilitation and reintegration,
>
> (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
>
> (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
>
> (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and
>
> (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;
>
> (*c*) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
>
> (i) reinforce respect for societal values,
>
> (ii) encourage the repair of harm done to victims and the community,
>
> (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate,

> involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and
>
> (iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and
>
> (*d*) special considerations apply in respect of proceedings against young persons and, in particular,
>
> (i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,
>
> (ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,
>
> (iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and
>
> (iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.
>
> (2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

[31] The following Purpose and Principles of Sentencing are set out in ss. 38 and 39 of the *YCJA*:

> **38.** (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.
>
> (2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

(*a*) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;

(*b*) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;

(*c*) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;

(*d*) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons; and

(*e*) subject to paragraph (*c*), the sentence must

(i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),

(ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and

(iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community.

(3) In determining a youth sentence, the youth justice court shall take into account

(*a*) the degree of participation by the young person in the commission of the offence;

(*b*) the harm done to victims and whether it was intentional or reasonably foreseeable;

(*c*) any reparation made by the young person to the victim or the community;

(*d*) the time spent in detention by the young person as a result of the offence;

(*e*) the previous findings of guilt of the young person; and

(*f*) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.

Judicial Reprimand

[32] One of the options available in sentencing a youth is a judicial reprimand, as set out in s. 42(2)(a) of the YCJA. As stated in ***R.*** v. ***D.J.M.,*** 2007 MBQB 298, paras. 18, 28 and 29:

> 18. The imposition of a reprimand pursuant to paragraph 42(2) of the *Act* does not involve a penalty; the offender is simply told to not re-offend. The Crown is correct when it describes a reprimand as the most lenient disposition available under the *Act* and indeed it is one which is rarely seen in a criminal court. As a sentence, it is more lenient than a discharge, whether conditional or absolute.
>
> 28. A reprimand is clearly an available disposition pursuant to section 42 of the *Act*. In appropriate cases, its purpose as a stern judicial warning may constitute a meaningful consequence. In some rare cases involving pre-sentence custody (where, for example, a youth, who is otherwise not a candidate for custody, nonetheless spends time in pre-sentence custody because of lack of legal representation or a systemic delay in providing an opportunity for bail), a reprimand may be an appropriate sentencing option. Sentencing judges must remain mindful however, that the imposition of a reprimand has both expressive and practical effects.
>
> 29. As the most lenient disposition under the *Act*, its imposition expresses that a court's evaluation of the circumstances surrounding the offence and the offender is such that a reprimand presents as an appropriate sanction or meaningful consequence. In other words, a court is saying that mindful of its obligation pursuant to paragraph 38(2)(c) of the *Act*, a reprimand (a stern warning) is sufficiently proportionate to the seriousness of the offence and the degree of responsibility of the offender. The court is also expressing its view (mindful of its obligation pursuant to paragraph 38(2)(b)) that a reprimand could be a sanction imposed on other similarly situated young persons committing the same offence.

[33] The Court in ***D.J.M.*** noted the following commentary regarding judicial reprimands:

> 20. The Crown submits that the circumscribed use of the reprimand has been the topic of discussion amongst various commentators. The Crown contends that one of the more obvious uses of the reprimand is in

those cases where a sentencing judge is of the view that the prosecution was inappropriate and wants to send an indirect signal:

> A "reprimand" is even less onerous than an absolute discharge, as the record is retained for a shorter period. It will most likely be used in cases in which a judge is signalling to the prosecutor that this is not the type of case that should be taken to youth justice court, but rather should have been dealt with by some type of extrajudicial measure…
>
> [emphasis added]

See Julian V. Roberts and Nicholas Bala, "Understanding Sentencing Under the Youth Criminal Justice Act" (2003) 41 Alta. L. Rev. 395-423 at 417, n. 109.

21. In the article by Miriam Bloomenfeld, "Potential Impact of the Youth Criminal Justice Act on Plea Resolution in Youth Cases" (2005) 50 Crim. L.Q. 165 at 173, n. 27, she states:

> … The federal Department of Justice explanatory materials suggest that one potential function of the new "**judicial reprimand**" sentence may be to telegraph the court's view that a particular case may have been better dealt with by an extrajudicial measure than prosecution …

[34] In paragraph 23 of ***D.J.M.*** the Court further stated:

> 23. In response to the Crown's argument that a reprimand is to be used sparingly, the young person refers to the explanatory text on youth sentencing of the Department of Justice Canada (as relied upon by the Crown), wherein it is said that the reprimand, a new sentencing option:
>
> > … may be appropriate in cases in which the court has determined that reparation made by the offender to the victim, or time spent by the offender in detention, essentially satisfies the requirement of a proportionate sentence.

[35] Defence counsel submits that the age of K. and her consequential lower moral culpability for the commission of the offence when compared to the 13 year old S., her acceptance of responsibility for her actions and the consequences of them, her low risk

of re-offending, her substantial compliance with her undertaking, her involvement in ongoing counselling and with F&CS support workers, and her lack of intent, malice and planning in the starting of the fire, which was essentially simply a "foolish act", are all factors which make a reprimand an appropriate disposition for K. Counsel submits that, were it not for the extent of the damage caused, this is a matter that would likely have been diverted away from the court process in the first place. In essence, his submission is that the imposition of a probation order on K., in particular one as long as two years and on terms similar to those imposed on S., would be excessive and would contravene the purpose and principles of youth sentencing, given K.'s age and the degree of responsibility she has for starting a fire that caused damage far beyond anything K. intended or could have been expected to appreciate could happen.

[36] Crown counsel's position is that a reprimand is not an appropriate disposition and was prepared to make further submissions in the event such submissions were required.

[37] I have decided that further submissions by the Crown are not required.

[38] While there are clearly circumstances in which a judicial reprimand is an appropriate sanction, this is not one of them.

[39] Certainly, this case would not be as highly publicized and "controversial" were it not for the extent of the damage caused. However, regardless of the lack of appreciation by K. at the time she participated in starting the fire, of the consequences that would flow, and regardless of her lack of intent to have caused such extensive damage, she intentionally started this fire and she must accept responsibility for the

consequences that flow. A judicial reprimand for this crime, in the circumstances of the crime and of K., does not accord with the purpose and principles of sentencing set out in the *YCJA*.

[40] It is clear under the *YCJA* that the least restrictive sentence possible that would hold K. accountable for this offence through the imposition of a just sanction that has meaningful consequences for her and that would promote her rehabilitation and reintegration into society, is the sentence that should and must be imposed.

[41] I am also required to consider the principle of parity in s. 38(2)(c) and, impose a sentence on K. that is similar to the sentence imposed on S., unless I am able to distinguish the actions and circumstances of K. from those of S.

[42] I am not persuaded that the actions of K. with respect to her involvement in the starting of the fire, leave her in a position of diminished responsibility when compared to S. I am not prepared to find that, simply by virtue of her being approximately one year younger that this necessarily means she was simply the follower of a more dominant S. I suspect that it is not always the case that the older youth is more dominant than the younger, and I would need more evidence in this case than I have to find that S. was a dominant figure in regard to K. in the commission of this offence.

[43] Nor do I find that any of the other circumstances directly surrounding the commission of the offence would support a conclusion that K. was less responsible than S. was. This includes the difference between the physical threat uttered by S. against the 11 year old youth, should he tell anyone, when compared to K.'s simple direction to him not to say anything.

[44] Both S. and K. deliberately set fire to a second mat and left it burning, after having already determined from lighting the first mat that these mats were flammable.

[45] Both S. and K. failed to take any of the steps available to them to alert others to the existence of the fire, despite having opportunities to do so. While I appreciate counsel's submission that such a failure, though regrettable, is not inconsistent with what one could expect from a 12 year old in such circumstances, it nonetheless is a factor that distinguishes the circumstances of K. in this sentencing hearing from what the case would be had she immediately tried to take steps to minimize the consequences of her actions by alerting others. As I stated in my decision in regard to S. in para. 66 in assessing the appropriateness of a custodial disposition, I find that the failure by K. to take steps to attempt to rectify the damage done, by alerting others to the existence of the fire, to be the most significant aggravating factor in K.'s post-offence conduct.

[46] Both S. and K. took steps when speaking to authorities to direct attention away from themselves towards an unidentified, and most likely unidentifiable, First Nations female. Again, while such an attempt to avoid detection is not necessarily unusual for a 12 year old in the circumstances, it nonetheless remains very wrong and distinguishes K.'s situation from what it would be had she taken immediate steps to accept her responsibility.

[47] I also find there to be nothing in the personal circumstances of K., as set out in the PSR and subnmissions of counsel, that would distinguish her from the personal circumstances of S., such that I would impose a different sanction upon her than was

imposed on S. In saying this I recognize that K. and S. are clearly very different from each other in many ways. These differences, however, are not such that they would cause me to impose a different sentence on K. than was imposed on S.

[48] I accept that K. is sorry for what she has done. The extent to which her regret may also be in regard to the consequences on herself as compared to the consequences on others and on the community, must be considered in light of her youth. While K. is clearly old enough and intelligent enough to understand that what she did was wrong and that it caused a great deal of harm, she is only 12 years old and our expectation of her ability to fully understand her actions and their consequences must be somewhat tempered in light of this fact.

[49] I find that, in large part likely due to K.'s apparent somewhat reluctant approach to discuss matters involving herself with adults in authority, including the author of the PSR, that there is an impression created that K. has been sort of "drifting passively" in her own small space since June 24, 2011. I have concerns that if K. does not start to make greater efforts to search out positive options and then make positive choices, that she will fall short of reaching her full potential. While it is far too early to come to any assessment or conclusion that K. is headed towards an anti-social lifestyle, there are enough indicators present to raise a concern that this remains a possibility, unless K. is provided the opportunity to participate in pro-social activities and she chooses to take steps to participate in these opportunities.

[50] I find that a lengthy probation order of the same duration and on essentially the same terms as that imposed on S., will not only provide meaningful consequences for

K.'s actions, but will also provide K. with the structure, support, opportunity and encouragement to live a more pro-social lifestyle that will benefit not only her but society as well.

[51] It is important that K. does not allow her commission of this offence to define herself negatively with respect to who she is and who she hopes to be. Should her actions affect her life? Certainly, however, the effect need not be a negative one as I mentioned when addressing K. during the sentencing hearing. Her crime does not need to be a ball and chain attached to her to mark her, using her words, as a "bad person" and limit her opportunities to succeed. What K. chooses to do with her life will ultimately be her decision, however it is incumbent on this court to provide her the opportunity and encouragement to make positive, pro-social choices. K. is certainly capable of being a contributing member of society and achieving any goals she sets for herself. At this point in time she needs to set such goals and be provided the encouragement and support to achieve them.

[52] With respect to the issue of community work service hours, such a term in the probation order is not a punishment. It provides K. an opportunity to make a contribution back to the community and such reparations as she can. Her counsel advised the Court during submissions that K. wanted to assist in the cleanup at the CGC but was understandably precluded from doing so. Certainly 240 hours of community work service is not going to come close to parity with the damage caused, but this maximum allowable number of hours is still a meaningful consequence for a 12 year old.

[53] My understanding when I conducted S.'s sentencing hearing was that the Manager of the CGC was not prepared at that time to allow S. to attend at the CGC for the purpose of performing any of her hours of community service. It would be my hope, both in regard to S. and now K., that there would be room in the future for them to do so in a manner that does not readily identify them as the youth that started the fire. Performing community work service hours at the CGC would not only allow these youth to provide a contribution back to the community at the very place the greatest harm was caused, it would bring home to these youth in the best way possible, the impact that their actions had on so may. It would also, perhaps, bridge the gap between the "victims" and the offenders in a way that would benefit all involved and, in the end, benefit society.

[54] Therefore, pursuant to s. 42(k) of the *YCJA*, K., you are sentenced to a period of probation for the maximum term allowable of two years. In accordance with the terms of this probation order you are required to:

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 to a youth worker immediately, and thereafter when and in the manner directed by the youth worker;

4. notify your youth worker in advance of any change of name or address, and promptly notify your youth worker of any change of employment or occupation;

5. reside as directed by your youth worker, abide by the rules of that residence and not change that residence without the prior written permission of your youth worker;

6. for the first four months of this order obey a curfew by remaining within your place of residence between the hours of 9:00 p.m. and 7:00 a.m. daily. For the next four months of this order you must obey a curfew by remaining within your place of residence between the hours of 10:00 p.m. and 7:00 a.m. daily. For next four months of this order you must obey a curfew by remaining within your place of residence between the hours of 11:00 p.m. and 7:00 a.m. daily. During these hours you must continuously be at your residence except when in the direct company or supervision of a parent, an adult approved in writing in advance by your youth worker, or otherwise with the advance written permission of your youth 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. perform 240 hours of community work service as directed by your youth worker or such person as your youth worker may delegate. Any hours spent in assessment, counselling, programming or treatment can, in the discretion of the youth worker, count towards community work service hours. These community work service hours are to be completed within the first 12 months of this order;

8. attend and participate in a Victim Offender Reconciliation conference as directed by your youth worker and, if so directed, complete any recommendations derived from the conference;

9. attend any assessment, counselling, programming or treatment as directed by the youth worker;

10. attend school or any other place of learning, training or recreation that is appropriate as directed by your youth worker;

11. provide your youth worker with your consent to release information regarding your participation in any assessment, counselling, programming, treatment, learning, training or recreation that you have been directed to participate in pursuant to the terms of this order;

12. have no contact directly or indirectly or communication in any way with your co-accused, S., or such other person as your youth worker may specify in advance in writing, unless otherwise directed in writing in advance by your youth worker;

13. not attend at the Canada Games Center in Whitehorse unless you have the prior written permission of your youth worker in consultation with the Manager of the Canada Games Center, or his or her designate;

14. not have in your possession any matches, lighters or incendiary devices unless under the direct supervision of a parent or other adult approved in writing in advance by your youth worker;

15. not be in possession of a cell phone, IPod, IPad, Blackberry Playbook, smartphone, computer connected to the Internet or other analogous device used for the purpose of communication unless you are under the direct supervision of a parent or other adult approved in writing in advance by your youth worker, or otherwise unless with the advance written permission of your youth worker in consultation with your parent or parents;

16. carry with you at all times any written permissions granted to you under this order for any purpose if you are exercising a permission exception to one of the terms of this order;

17. attend for a review of your performance under this order in the Youth Justice Court as and when required, upon an application for review made by yourself, a parent, the Attorney General or your youth worker.

[55] The terms and length of this probation order may be varied by the Youth Justice Court upon review in accordance with s. 59 of the *YCJA*.

[56] As apparently the cell phone used by K. has already been returned to her parents, and the Crown is not seeking a forfeiture order as a result, there is no order for forfeiture such as there was in ***S.***

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COZENS C.J.T.C.