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s. 110(1) of the Youth Criminal Justice Act.

*R. v. S.F.S.*, 2003 YKYC 2

Date: 20030502  
Docket No.: T.C. 03-03501A  
Registry: Whitehorse

**IN THE YOUTH JUSTICE COURT OF YUKON**  
(Before His Honour Judge Faulkner)

REGINA

v.

S.F.S.

Kevin Drolet

Appearing for Crown

Samantha Wellman

Appearing for Defence

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**REASONS FOR SENTENCING**

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[1] FAULKNER T.C.J. (Oral): This is the matter of S.F.S. This young person is before the court for disposition having entered pleas of guilty to two offences: firstly, a charge of breaking and entering a dwelling house and committing therein the indictable offence of theft; and secondly, a charge of escaping lawful custody.

[2] The break and enter of the dwelling house caused serious anguish to the residents of that property as indicated by the victim impact statement filed with the court.

[3] The normally serious view the Court must take of the break and enter of a dwelling house is aggravated in this case by the fact that the offender armed himself with a metal poker in order to deal with anyone that he might encounter during the course of his crime.

[4] With respect to the charge of escaping lawful custody, this was part of a pattern established by this youth over the last year. Last July, he was placed in open custody for a robbery. He has repeatedly been unlawfully at large from that matter.

[5] The charge presently before the court relates to his last escape from open custody. In fact, he was at large when the break and enter was committed. It should be noted that he has been so often unlawfully away from his open custody placement that there are still four and one-half months left on the open custody order despite the fact that it was imposed in July of last year.

[6] The accused has a record of prior convictions which is as follows: possession of stolen property, dangerous driving, a second charge of possession of stolen property, the already mentioned charge of robbery, a charge of obstructing a peace officer, two separate charges on separate dates, I believe, of escaping lawful custody, a charge of breach of disposition under the *Young Offenders Act*, R.S.C. 1985, c.Y-1, and two charges of obstructing a peace officer.

[7] The significance of this record becomes all the more clear when it is noted that all of these offences, including the present ones, have been amassed in a period of less than a year.

[8] Mr. Drolet and Ms. Wellman, quite properly, waived the necessity of the

preparation of the pre-sentence report as there is abundant background material available to the court with respect to this youth, including prior predisposition reports, bail assessment reports, and two recent and quite complete psychological assessments of this youth.

[9] The conclusion that is inescapably drawn from these materials is that there is, in this case, no option but closed custody. There is a clear pattern of noncompliance with previous dispositions. There is a pattern of findings of guilt, coupled with the commission of the serious indictable offence. As already indicated, he has previously been sentenced to open custody but pays no mind whatever to that particular disposition and escapes at will.

[10] The psychological assessments reveal that this youth has no concern for his offending behavior and no inclination whatever to change it. We are in the unfortunate position that, at the age of sixteen, this youth has embarked upon a life of crime, largely in support of alcohol and drug addictions.

[11] Having regard to the background of this offender, there is no likelihood whatever that he will comply with any other disposition, including one of open custody.

[12] It was suggested in argument that this youth is a high risk to re-offend. In my view, this case goes beyond high risk and there is, in fact, an absolute certainty that accused will re-offend if he were to be immediately released.

[13] With respect to the charge of escaping lawful custody, the Crown submitted that the offender has been in custody now some 30 days and that this was a fit

sentence with respect to that matter. I agree, and accordingly, with respect to that charge, the youth is sentenced to 30 days, time served.

[14] With respect to the charge of breaking and entering, Mr. S., you are ordered to serve six months in closed custody to be followed by three months to be served under supervision in the community, subject to conditions.

[15] If you breach any of the conditions while you are under supervision in the community you may be brought back into custody, and you will be required to serve the rest of the second period in custody as well.

[16] You should also be aware that under other provisions of the *Youth Criminal Justice Act*, S.C. 2002, c. 1, the Court could require you to serve the second period in custody as well. The periods in custody and under supervision in the community may be changed if you become subject to another sentence.

[17] The conditions of the custody and supervision order are as follows: You will keep the peace and be of good behavior. You will report forthwith to the provincial Director upon your release from custody and thereafter be under the supervision of the provincial Director. You will inform the provincial Director immediately on being arrested or questioned by the police. You will report to the police or any person that the provincial Director will specify. You will advise the provincial Director of your address of residence, and report immediately to the provincial Director any change in that address, in your normal occupation, including employment location, or education, training or volunteer work, in your family or financial situation or anything else that might be reasonably expected to affect your ability to comply with the conditions of this sentence.

[18] You will not own, possess, or have control of any ammunition, weapon, prohibited ammunition, prohibited device or explosive substance; except in accordance with an authorization in writing by the provincial Director for the purpose of participating in programs specified in that authorization. You will reside where directed by the youth worker, and obey all rules of that residence.

[19] You will abstain from possession or consumption of alcohol or controlled drugs and substances. You will submit to breath or bodily fluid sampling on demand by a peace officer or your youth worker, if either believes you are in breach of the order.

[20] You will attend for psychological assessment treatment and counselling as directed by the youth worker. You will take such alcohol and substance abuse treatment or counselling as directed by the youth worker. You will maintain attendance in education or other programming as directed by the youth worker. You will attend the Youth Achievement Centre as directed by the youth worker.

[21] You will be subject to a curfew and be in your place of residence between the hours of 9:00 p.m. and 6:00 a.m.

[22] Following the completion of your custodial sentences, you will be subject to a probation order for a period of one year. The conditions will be that you will keep the peace and be of good behavior, that you will report to the court as and when required. You will report to the youth worker forthwith after the order comes into force, and thereafter as directed. Additionally, the conditions will be identical to clauses (g) through (n) of the custody and supervision order.

[23] There is also the matter of the remanet of the existing *Young Offenders Act*

sentence, and it should now be integrated with the sentences imposed today. The result will be that you will serve six months in secure custody, three months in open custody, four and one half months subject to the custody and supervision order in the community, and one year on probation.

[24] MR. DROLET: If I may, Your Honour. I simply ask with respect to the probation order, the order made by the Court require that he report to a youth worker as directed. The recommendation of Mr. Sigmond had been that that include participation in the intensive supervision program, and we would ask that you make that an order at this time.

[25] THE COURT: Yes, that should be included as well.

[26] MS. WELLMAN: Sorry. May I just clarify that on the supervision order and the probation order?

[27] MR. DROLET: Just the probation order.

[28] MS. WELLMAN: Just the probation order.

[29] MR. DROLET: And with respect with to the community supervision order, the Crown had also sought, based on the recommendations of Mr. Sigmond, an order requiring that the young person have no contact with persons identified to him in writing by the youth worker as negative influences or having prior criminal records.

[30] THE COURT: Any submissions on that, Ms. Wellman?

[31] MS. WELLMAN: No.

[32] THE COURT: So ordered.

[33] MR. DROLET: And that is just to apply to the community supervision order. I have also brought to my friend's attention, Your Honour, that I had neglected to make two brief applications. First, the Crown makes application under s. 489.051 for an order for forensic DNA sampling. This is a secondary designated offence, but the Crown respectfully submits that the circumstances demonstrate the appropriateness of such an order.

[34] THE COURT: Any submissions?

[35] MS. WELLMAN: No, it's fine.

[36] THE COURT: That order will go as well.

[37] MR. DROLET: And finally, the property that was seized by the RCMP consequent on the investigation, contrary to s. 348 of the *Criminal Code*, has not been returned to the victims of this offence. The Crown makes an application pursuant to s. 490(11) for immediate return of the property to its lawful owners.

[38] THE COURT: So ordered.

[39] MR. DROLET: Thank you, Your Honour. With respect to

Counts 2 and 3 on the three-count Information, the Crown directs a stay of proceedings.

[40] THE COURT: Existing probation order, in light of my dispositions today, should be terminated.

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FAULKNER T.C.J.