

Citation: *R. v. C.T.D.*, 2013 YKYC 5

Date: 20130605
Docket: 12-03609
12-03609A
12-03609B
Registry: Whitehorse

IN THE YOUTH COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

C.T.D.

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

Appearances:
Kevin MacGillivray
Kim Hawkins

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): C.D. has entered a guilty plea to having committed an offence under s. 267(b) of the *Criminal Code*. He has also entered guilty pleas to having committed two offences under s. 145(3).

[2] The circumstances of these offences are as follows: on February 28, 2013, Mr. D., who was intoxicated, was in the company of a group of his friends. The complainant in this case, D.O., who was 13 years of age as compared to Mr. D.'s 17 years of age, was in the company of his group of friends. A fight broke out between

some girls from each of the groups and Mr. O. stepped in to try to break up this fight. While Mr. O. was doing that, Mr. D. jumped on top of him and started to punch him repeatedly in the head until his friends told him to stop and he did.

[3] Mr. O. received significant bruising and swelling to his face and mouth area and ended up having his nose broken which was not caught or corrected and which now requires him to attend for surgery in September. A Victim Impact Statement was filed that makes it clear that this has had a pretty traumatic effect on this young man and his family.

[4] With respect to the s. 145(3) offences, Mr. D. was released on a recognizance that required him to keep the peace and be of good behaviour and to stay in his residence at all times, unless he was in the company of approved persons or had a permission exception. On May 12, 2013, an individual called the RCMP to report that there were two males on the roof of her deck. The RCMP attended, located Mr. D. and arrested him. He had no permission to be outside of his residence, at, what I understand, was shortly after 8:00 in the morning. By being on the roof of the deck of this private residence, he clearly was not keeping the peace and being of good behaviour.

[5] Mr. D. has a total of 40 days in custody. Crown is suggesting a sentence of four to six months as appropriate for the s. 267(b) charge and that the time that he has in custody should be attributed to the breach charges, thus effectively leaving him with one day deemed served, taking into account that time. Defence counsel is suggesting that a sentence of 90 days should be imposed for the s. 267(b) charge which should take into

account and be reduced by the amount of time Mr. D. has spent in custody, and that there be a period of one month open custody to follow.

[6] Mr. D. has accumulated a number of entries on his youth record since April 2010. There are several property offences, a host of breach offences, but most significantly a number of offences of violence. He started off his youth record with a s. 267(a) and s. 266 conviction, in addition to some other process and theft convictions, and started off with jail sentences for the offences of violence. Since then Mr. D. has, in 2012, been sentenced for another s. 266 offence for which there was a 30 day jail sentence, another one for which there was a 45 day custody and Supervision Order, and then a s. 270(1)(a) charge, for which he received 40 days closed custody. In February 2012, Mr. D. had also received 60 days closed custody and some time in custody for some other offences.

[7] As I understand it, Mr. D. was released from custody barely two weeks before the commission of this offence. I have had a chance to look at the Bail Supervision Report that was prepared for Mr. D.'s April 4, 2012 court date, and I dealt with Mr. D. before, have received information from his counsel, and have some recollection of his personal details. There is no question that Mr. D. simply does not comply with court orders whether it is probation or undertakings or a recognizance, as stated in the Bail Supervision Report:

...[his] history of community supervision reflects an inability or an unwillingness to comply with conditions of Undertakings or community based sentences such as Probation Orders, even when structured with restrictive conditions that essentially place him on "house arrest." ... However, without exception, C. has not followed through with judicial expectations, and in many cases, has

reoffended while subject to conditions of Court Orders. This has resulted in the net-widening effect of an accumulation of process charges, [as well as] the accrument of further substantive charges.

[8] Now, Mr. D. is a member of the Ross River Dena Council. He comes from a very difficult background that is consistent with what we see so often with young Aboriginal individuals; a dysfunctional home, shuttled in and out of foster homes, exposed to violence, exposed to substance abuse while he was a young man, having responsibilities of younger siblings cast on him at a very young age. Mr. D. struggles with some of the issues related to his diagnosis of partial Foetal Alcohol Spectrum Disorder, although he is noted to be very high functioning within that. Mr. D. has worked. He was working at Raven Recycling when he was arrested, and that job may still be open for him. Counsel indicates Mr. D. does not have a very strong recollection at all of what happened on that day.

[9] Custody is an appropriate disposition for the s. 267(b) charge and this is a serious assault against a young man without, in my opinion, provocation. Although I understand it took place in the context of a skirmish between other individuals, there was no reason for Mr. D., on the facts I have before me, to have become involved and to have assaulted this young man and caused him the harm that he did. I believe that an appropriate disposition for this on its own would be 120 days custody. I take into account what defence counsel is suggesting with respect to a transitional period of open custody on the breach charges and I find there to be some merit in that.

[10] In the end, there will be a period of closed custody. I will take into account that Mr. D. has spent 40 days in custody and I will reduce the period that he is going to

spend in closed custody on the s. 267(b) charge. Also taking into account that Mr. D. is going to do an additional period of open custody on the breach charges, I will reduce that to 70 days remaining. From the 120, less the 40, would be 80 days. I am taking 10 days off because of the open custody that it is going to continue, for globality. There are 70 days remaining on the s. 267(b) charge. With respect to the two breach charges, there will be an open custody order for a period of 30 days. That will be, as I understand it, 20 and 10, and it will be on the Statutory Conditions and any other conditions that are imposed by Youth Probation.

[11] There will be a period of probation to follow, notwithstanding Mr. D.'s apparent unwillingness and chosen inability, but it is necessary in this case to place him on a period of probation because he is going to transition into an adult this fall. I want to give him every opportunity to try and make some changes in his life now that will not have him before a judge in adult court immediately upon his turning 18. The consequences there for offences like this will be significantly higher. Crown put forward a range of sentence had an adult done this, and it was not far off the mark, if off at all.

[12] The period of probation will be for six months because that will take us into adulthood. It will be a six month Probation Order. It is going to require Mr. D. to:

1. Keep the peace and be of good behaviour. Appear before the Youth Justice Court when required to do so;
2. Report to and be supervised by a Youth Worker or a person approved by the Youth Worker;
3. Notify the Youth Worker of any change of address or change of place of

- employment, education, or training;
4. Make reasonable efforts to obtain and maintain suitable employment;
 5. Reside as directed by your Youth Worker and not change that residence without the prior written permission of your Youth Worker;
 6. Have no contact or communication directly or indirectly in any way with D.O., except through your Youth Worker for the purposes of providing an apology to the victim, should you choose to do so.
 7. Not own, possess, or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance;
 8. Take such assessment, counselling, and programming as directed by your Youth Worker;
 9. Provide your Youth Worker with consents to release information with regard to any participation, any assessment counseling, programming or employment that you have been directed to do pursuant to this Order.

I am not going to put an abstain clause on the Probation Order; you are not allowed to drink until you are 18. If you drink, you are going to be back in front of the Court.

[DISCUSSION RE PROBATION ORDER CURFEW]

[13] THE COURT: I am not going to put you on a curfew, but if you are out at 1:00 in the morning drinking you are going to be back before me anyways, and it is not going to be for something as minor as a curfew breach, it will be for something significant. All right?

[14] THE ACCUSED: Yeah.

[15] THE COURT: You have a lot of power over your life, coming into your adult years. How you use it is going to affect where the rest of your life is.

[16] I am going to have a DNA order on the s. 267 and there is going to be a firearms prohibition under s. 110, and it will be for a period of two years.

[DISCUSSION RE FURTHER SUBMISSIONS ON NO CONTACT]

[17] THE COURT:

10. Not attend at 3161 3rd Avenue, Whitehorse, Yukon;

11. Not attend at any residence known to you to be the residence of D.O.

[18] The remaining counts?

[19] MR. MACGILLIVRAY: The Crown directs a stay.

[20] THE COURT: Stay of proceedings.

COZENS C.J.T.C.