

Citation: *R. v. J.J.S.*, 2014 YKYC 2

Date: 20141121
Docket: 14-03546B
14-03546A
14-03546
Registry: Whitehorse

YOUTH JUSTICE COURT OF YUKON
Before His Honour Judge Luther

REGINA

v.

J.J.S.

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

Appearances:
Joanna Phillips
Kim Hawkins

Counsel for the Crown
Duty Counsel for the Defence

REASONS FOR JUDGMENT

[1] LUTHER T.C.J. (Oral): J.S., born May 7, 1997, is before the Court as a young person. He is charged on a seven-count Information: two alleged breaches under s. 163.1(4); two alleged breaches of s. 172.1 of the *Criminal Code*; and in addition, three charges under s. 137 of the *Youth Criminal Justice Act*, S.C. 2002, c. 1.

[2] Guided by ss. 28 and 29 of the *Youth Criminal Justice Act* and s. 515(2)(e) of the *Criminal Code*, I am satisfied on a balance of probabilities that a well-designed recognizance would cause the young person to appear in court; would offer adequate protection to the public and, in particular, to C.C., S.J., and other potential complainants; and further, would maintain confidence in the administration of justice.

[3] Ms. Hawkins has put the present alleged crimes into some context. We are dealing with immature, young people who are more or less addicted to their cell phones and social media, and who do very stupid things when they are under the influence of alcoholic beverages.

[4] C.C., S.J., and countless other young people have tragically learned that to expose their naked or partially naked bodies to electronic transmission, it cannot be undone. What is out there is out there. This is clearly at the opposite spectrum from organized criminals who, for profit, kidnap, confine, and force children to perform sexual acts for the camera, and then feed the lascivious appetites of pedophiles. Such evil men and women would not be released on bail.

[5] J.S. is a young man with many problems. Euphemistically, he was sent to the Yukon to live with extended family and get a fresh start; however, there is more to it than that. He has spent months in custody in Ontario and has been suicidal. In reality, he was well beyond his parents' control. Although the first couple of weeks went well after his arrival here in mid-September, things started to go downhill and certainly accelerated in the last two to three weeks. The relationship with his cousins as caregivers has broken down completely. J.S. became disrespectful, ignored curfews,

drank alcoholic beverages, and allegedly used the Internet for illicit purposes, contrary to s. 163.1 and s. 172.1 of the *Criminal Code*.

[6] Electronic evidence offers extra strength to the Crown's case when these matters come to trial. He has allegedly violated at least four conditions on his Ontario probation orders from August 2014. His youth record includes offences from December 2011, s. 334(a) and s. 249.1, for which he was placed on probation for one year.

[7] That the parents recognized him as beyond their control and spent the time and money to attempt a fresh start for him is somewhat commendable. This effort, in part, was brought about because of a similar life experience of his mother when she was younger.

[8] We heard evidence from the mother yesterday by telephone. She was in Walkerton, Ontario. I am not satisfied that she has a full appreciation of the seriousness of the problems here. Her approach to his purported need for a cell phone, for example, was somewhat naïve and enabling. The fact that the parents are willing to spend yet more money on bringing him home via the most direct route, with only a brief stop in Vancouver, is meritorious. It shows they still have hope.

[9] J.S. needs much professional help to turn his life around. Quite frankly, his life right now is in a mess.

[10] The local help of Robert Fischer and Sean Keating, youth counsellor and youth probation officer in Ontario, should be beneficial if properly sought out and utilized.

[11] House arrest without the necessary and consistent parental controls is doomed to failure. The full engagement of devoted parents, who may even need help themselves in keeping J.S. under control, cannot be brought into effect with a small cash deposit of \$500 to \$1,000.

[12] Not to penalize the parents, but, rather, to impress upon them the importance of their roles in supervising the house arrest, the cash deposit will, of necessity, have to be higher and is hereby fixed at \$5,000. J.S. will thus be released on a recognizance with \$5,000 cash. In addition, both parents will sign sureties in the amount of \$1,000 each, that is, without cash.

[13] The terms of the release are as follows:

1. You are to keep the peace and be of good behaviour;
2. You are to report to the Yukon youth worker by telephone within 48 hours of your arrival in Ontario and thereafter as required;
3. You are to reside with your parents and obey all house rules;
4. You are not to be outside your residence unless you are in the immediate company of a parent or a social worker or a youth worker or a properly assigned school monitor or assistant;
5. You are not to contact nor communicate in any manner, directly or indirectly, with C.C. or S.J.;

6. You are not to possess or use any cell phone or computer that has access to the Internet;
7. Insofar as it is not inconsistent with this recognizance, fully comply with your probation orders;
8. You are to physically carry with you a copy of this recognizance and your probation orders at all times when you are outside of your residence;
9. You are to remain in the custody of the Yukon Manager of Youth Justice until you are accompanied to the Whitehorse airport and then go directly through security, take the flights as per your airline passenger ticket, meet your parent or parents as planned and agreed, at the Ontario airport.

[14] For the most part, this is a very serious situation with roots, trunk, and branches in Bruce County, Ontario. It would be wrong for me as a Yukon judge to merely transfer this young man and his issues back to Ontario. On the other hand, it would be wrong to have him languish in the cells here with no family supports. Thus, I have ordered the judicial interim release which addresses the concerns in s. 29 (2)(c)(i), (ii), and (iii) of the *Youth Criminal Justice Act*. It is hoped that the significance and value of the recognizance will be fully understood by J.S. and his parents.

[15] Of course, the \$5,000 cash deposit will be returned to the paying parent once this case has concluded, provided that J.S. has not breached his bail conditions.

[16] Once the police investigation has concluded here, it is possible that these charges could be transferred to Ontario with the necessary consents.

LUTHER T.C.J.