

Citation: *R. v. D.J.S.*, 2009 YKYC 3

Date: 20090604
Docket: 09-03513
Registry: Whitehorse

IN THE YOUTH JUSTICE COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

D.J.S.

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

Appearances:
Eric Marcoux
Emily Hill

Appearing for Crown
Appearing for Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. S. has pled guilty to one count under s. 434.

[2] The facts before the Court. On May 9th, Mr. S. was observed setting fire to a 1999 Econoline van that was parked on Lambert Street, downtown Whitehorse. He was arrested at the scene, clearly highly intoxicated. He was uncooperative during his arrest but he did volunteer that he had been car-shopping. He was also found in possession of a lighter.

[3] The value of the van, essentially, was \$7,000, and it was completely gutted with the fire. His actions were observed by independent witnesses, and they also did

observe that he was intoxicated, clearly intoxicated, at the time. He had a blood-alcohol of 169.

[4] He has been in custody since that offence. Crown and defence have agreed that closed custody is the likely result. They differ slightly on the range, Crown seeking six to nine months and defence seeking four to six months.

[5] Mr. S. had just been released from the grips of probation at the time of this offence. He does not really have a recollection of the event per se, as he was very intoxicated. He is soon to turn 18, has been in care for the last ten years, residing at the RYTS, and continues to have some difficulties with the rules and regulations there.

[6] His record shows that he has had a lot of difficulties with the probation that he was on. He has numerous convictions for breaches. He has, initially, a couple of very serious offences, violent, related offences, 2008, then, essentially, almost exclusively process offences; one property, since then.

[7] It is an extremely serious offence, Mr. S., and the reason it is such a serious offence is because of the potential danger that you put others in. By setting fire to a vehicle, which in all likelihood has fuel in it, you are setting the fuse on a bomb. When the bomb goes off, whoever is around is likely to get seriously injured, if not killed, in addition to the damage to property. So it is something that has to be treated very seriously and is why everybody here recognizes, and I believe you have understood from your counsel, that you are going to have to stay in jail for a time. The Court is pleased to hear that you have been doing well in your time there, that you have been using it in a positive manner, getting some school course work done.

[8] I am going to impose the following. I am going to impose a total of six months in jail. That is a total of 180 days, Madam Clerk. The first four months, or 120 days, will be in closed custody, less the 40 days that I will give him as credit for his remand time. The final two months of 60 days will be served in open custody.

[9] There will be a one-year probationary period with the standard conditions of:

1. Keep the peace, be of good behaviour;
2. Report immediately upon your release from open custody to your probation officer, thereafter as often and in the manner directed by the probation officer;
3. Advise your probation officer of any changes in your name, address, status of education or occupation.

You are to:

4. Take such assessment, treatment and programming for alcohol and/or drug counselling as directed by your probation officer;

[10] There will be no victim fine surcharge.

(PROCEEDINGS CONCLUDED)
(PROCEEDINGS RECONVENED)

[11] MS. HILL: I apologize, Your Worship, we just require some clarification. Because of the requirement under the *Youth Criminal Justice Act* that one-third of the sentence be served in the community, my understanding from my conversations with Mr. Marshall, and he'll correct me, is that if the -- it's a six-month sentence that's imposed, normally, if it was just a straight six months, four months of

that would be in custody and two months of it would be out in the community. Here it's six months. Some of that's been broken down. I think we just need some clarification as to the total amount that should be served in custody, or the total amount of the sentence, so that Mr. Marshall can do the math backwards on how much of that's in the community.

[3] THE COURT: Right. I should have picked that up myself. The intent was for Mr. S. to do six months, so that would normally, then, have been applied to four months of custody and two months in the community?

[4] MS. HILL: Yes.

[5] THE COURT: His four months of custody should be reduced by his 40 days allowance of remand time, and I would suggest, then, that it should be three and one. It should be three closed, one open, and then the community. Does that work?

[6] MS. HILL: That's fine. Thank you.

CAMERON J.P.T.C.