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Registry: Whitehorse

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

REGINA

v.

J.O.

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

Appearances:
Melissa Atkinson
Fia Jampolsky

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] CAMERON J.P.T.C. (Oral): Mr. O. has pled guilty to one count under s. 334(b), one count under s. 145.5 and one count under s. 270(1)(a). August 9th of last year, Mr. O. attended at Superstore here in Whitehorse, took two cartons of cigarettes at a value of \$116.15. He left the store without paying for them. The cigarettes were recovered.

[2] He was then required to attend court on October 18th of last year. He failed to do so. January 14th of this year, the police were attending an indicated disturbance in the Wal-Mart parking lot. Mr. O. was there. He started to take off and the police chased him. He was eventually caught by the police. He remained very combative, kicking and spitting at the police officer. The police officer became more controlling and physical, took him to the ground and delivered a blow to the mouth area.

[3] Mr. O. continued to spit saliva and blood at the police officer. Eventually, with the assistance of a second officer, they managed to restrain him. He continued to be combative and continued spitting at the police officer.

[4] A very complete pre-sentence report in regards to Mr. O., and of some significance is that over the period from August to now, Mr. O. has spent 34 days in custody. He is 13 years old. Crown is suggesting a probationary term in the 10 to 12 month area. Defence is suggesting a conditional discharge in the six to eight month area. They seem to agree, generally, on the conditions.

[5] J., what do you want to be when you grow up?

[6] THE ACCUSED: A pro skateboarder.

[7] THE COURT: A pro skateboarder?

[8] THE ACCUSED: Yeah.

[9] THE COURT: Do you think you can do that from jail?

[10] THE ACCUSED: No.

[11] THE COURT: So in order to be that you are going to have to stay out of jail, right?

[12] THE ACCUSED: Yeah.

[13] THE COURT: Well, there are a few things that really stand out to me, and when I look at this pre-sentence report, it is very complete. It tells me that unless you make some significant changes to your behaviour, you are going to wind up being a professional nothing except a convict. If you choose that you really want to be a professional skateboarder, or professional anything else, you are going to have to get a hold of your behaviour. It is that simple.

[14] For a number of reasons, none of which I think are wrong but all of which put you in a rather unique situation, you have now spent a total of a little over a month in lockup. So you now know what we are talking about. You know what it is like. So it is not the fear of unknowing that is going to keep you out of jail, it is the fact that you know and you do not like it that will keep you out of jail, but that is all. Entirely driven by you, entirely driven by your decisions. If you have got other people around you, including your brother, egging you on to do the wrong thing, you should know that, ultimately, it will put you in jail; maybe not that time, but one of the times.

[15] When I read this pre-sentence report, your behaviour is virtually out of control. You are doing pretty much exactly as you want, as you please, and that is what wound up putting you in jail. At 13 it is very difficult for a young fellow to wind up in jail. It does not make you nastier than anybody else; it just simply means you cannot control your impulses or you are not man enough, or boy enough, either way, to make your own

decisions. You let others decide for you what you will do and if they are deciding what you will do is go drinking and smoking dope and partying and maybe steal some stuff from a store because you need it, then that is what you go along with. That is your choice; it is not them making you do it. Your mom is very concerned about trying to give each of you boys your own identity. Well, as long as you are doing whatever others tell you, you do not have your own identity, you have theirs. You are just a sheep, one of many following all the others, and that will put you back in jail, where you will be one of many following all the orders as directed.

[16] So here you are. You are going to be turning 14 here in another couple of weeks. It is maybe time for you to start to take a little bit of responsibility for your own decisions. It certainly does not cut it with the Court for you to come in here in serious trouble saying, "Well, so and so told me to do it." It just does not cut it, because you have the opportunity to say, "No, I won't do it." You are here on your own accord.

[17] The bottom line is what we are dealing with here today are two less serious offences and one quite serious offence. The less serious offences are the shoplifting, which is wrong, and it is an offence and there should be consequences; the failing to attend court, which is wrong and it is an offence and there normally are consequences. When you are an adult and fail to attend court, usually you go to jail for a month. So it is that serious.

[18] The more serious offence is the assaulting a police officer. The police have a tough enough job. They have to deal with all kinds of people, that are out of control for all kinds of reasons. Just because they put on a uniform does not mean that they

should be spit at, does not mean that they should have to listen to a bunch of foul language that is directed at them. It is their job. They are there to try to keep people peaceable. If you choose to fight that, they are trained to probably fight back harder than you can. So it is probably unfortunate that you may have got slapped in the mouth, but I cannot say it would be unexpected. It should have been expected. You think you can just sit there and yell at somebody, say anything you want and have absolutely no reaction? If somebody was doing it to you, you would attack them. Now, that would not be the right thing to do, but you would do it. So try sometime to put yourself in somebody else's shoes. If you simply stopped when the police officer grabbed you, you would not have gotten hurt at all.

[19] That brings me to the whole thing about the 34 days. It is quite disturbing that you have been in custody for 34 days, your first involvement with these types of offences, being your only involvement at this stage. For that reason, in as much as I understand the Crown's position and I understand defence's position, I am going to move beyond either of those positions to a position that, fortunately for you, is available now. It is not used very often, but, in my view, it is the appropriate thing to do at this stage.

[20] Because of your 34 days that you have been in custody, I think this matter should be dealt with pursuant to s. 42(2)(a), which is simply a reprimand. That is simply me talking to you here today. There will be no follow-through. You are not on probation, you are not on curfew, you are not on any of that stuff by the Court right now, but I want you to know, I expect to see you back unless you make some major changes, and then

it will be a little different story, because then you will be back in no longer for your first time. You only get one shot at being a first offender and you have taken it.

[21] As such, that is my proposal to deal with all three matters. What, if any, of these charges is still outstanding?

[22] MS. ATKINSON: Yes, with respect to the outstanding, the Crown directs a stay of proceedings.

[23] THE COURT: On all of them, including the new?

[24] MS. ATKINSON: That's correct.

[25] THE COURT: Thank you. So all matters are stayed. So you are free to go. You are free to go home, J. The courts are no longer included in directing your life. That may sound like a real freebee to you, but it is not. The bottom line is what I told you here today, you better take a little bit of note on it or I will see you here in the next week or two probably. Good luck to you. Thank you.

CAMERON J.P.T.C.