

YOUTH JUSTICE COURT OF YUKON
Before His Honour Chief Judge Chisholm

REGINA

v.

M.S.H.-P.

Publication of information identifying the young person(s) charged under the *Youth Criminal Justice Act* is prohibited by section 110(1) of the *Act*.

Publication of information that could identify the complainant or a witness is prohibited by s. 111(1) of the *Youth Criminal Justice Act*.

Appearances:
Benjamin Eberhard
Vincent Larochelle

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM C.J.T.C. (Oral): M.S.H.-P. has entered guilty pleas to three offences contrary to the provisions of the *Criminal Code*, namely a common assault, theft of money, and extortion, occurring between the beginning of May 2018 and June 12, 2018, in the City of Whitehorse. M.S.H.-P. was a young person under the provisions of the *Youth Criminal Justice Act*, S.C. 2002, c. 1 (“YCJA”), at the time of these offences.

[2] In brief, the facts are that M.S.H.-P. met the victim in this matter through a mutual friend. For a period of time thereafter, I suppose it could be described as M.S.H.-P.

having terrorized the victim on occasion by accusing the victim of stealing \$500 of marijuana; threatening the victim to pay \$500, and subsequently stealing \$80 from the victim, and assaulting the victim.

[3] M.S.H.-P. comes before the Court with no criminal history and has now just turned 19 years of age.

[4] I have a comprehensive Pre-Sentence Report (“PSR”) that has been prepared and provided to me to assist in developing a sentence that is appropriate for the actions of M.S.H.-P., taking into account the provisions of the *YCJA* and the *Criminal Code*, where applicable.

[5] Crown and defence both agree that a deferred custody supervision order is appropriate. They disagree on the length and, to some extent, the terms of the order, which would be followed by a period of probation.

[6] In addition to having entered guilty pleas, M.S.H.-P. has also expressed remorse in court today. What comes to light from having read the PSR, the letter that was filed by a family friend; having heard from Ms. P. and having read the letter of Ms. H., is that what transpired back in May and June of 2018 seems to be very out of character for M.S.H.-P. In fact, M.S.H.-P. is described as somebody who is not only intelligent, but who is loyal, humble, and honourable. Obviously, the information that has been presented to me shows that you are a better person than revealed by the facts of the offences.

[7] I appreciate what your counsel has said today, that this is something that occurred over a shorter period of time than what we might otherwise see; but, at the same point in time, it was not a situation that was a one-off, and so it was not something that happened in one day and then was over. It continued for a period of weeks.

[8] One of the things that I noted and marked in the PSR was that you have had the benefit of two supportive parents. You have had the luxury, quite frankly, of being involved in activities in the community including, for example, skiing at Mount Sima, and playing soccer, so you are in a better situation in terms of your upbringing. You are in a much better situation than many of the people that come before the Court.

[9] What concerns me, to a certain extent, is that in the PSR, the one flag for me was that you did not think that you have any issue with substance abuse. When I was 18 or 19, as you now are, a lot of us had a tendency to think that they knew what was best for themselves. As you get older, you will probably realize that maybe some of the decisions that you made as a youth could have been better made.

[10] I would really ask you to consider whether the use and abuse of substances is something that you want to continue with. Quite frankly, what I see and what counsel see on a day-to-day basis are people with issues coming before this Court — and there are different issues that they have — but those issues become more severe when they consume alcohol or use drugs, and it leads to behaviour that becomes criminal behaviour, and obviously they then have to face the consequences.

[11] You have a good work history and you have some intention of perhaps going back and upgrading your education, but the bottom line is that, as has been stated here

today, you have to learn from this and move on from this and have empathy for people, even if they do things that you do not find to be correct or proper. If there is anything that you can take away from today, in terms of moving forward with your life, that is something that you should not forget.

[12] I take the point, and I think it is an important point, that this is your first brush with the criminal justice system. I truly hope that it is the last time that you come before the Court.

[13] I think that you have the ability to have a productive life and not engage in criminal behaviour.

[14] I am going to give you the benefit of the doubt because of the fact that you are a first-time offender. I am going to give you a lower sentence than the Crown is seeking, although I am not saying that what they have suggested is inappropriate in terms of the range of sentence. I think that you should also consider that the Crown has treated you fairly, in my view, in terms of allowing you to enter the guilty pleas to the lesser included offences of assault and theft.

[15] So, there will be a deferred custody and supervision order pursuant to s. 42(2)(p) of the YCJA and it will be for a period of two months.

[DISCUSSIONS]

[16] The statutory conditions apply. They are:

1. Keep the peace and be of good behaviour;

2. Appear before the Youth Justice Court when required to do so by the court;
3. Report to your Youth Probation Officer immediately today and then be under the supervision of your Youth Probation Officer;
4. Not possess any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance except as authorized by this order;

I am not going to authorize any. I understand that you do not have any of those types of weapons, in any event.

5. Remain within the Yukon unless you obtain the written permission of your Youth Probation Officer, who will likely be Mr. Marshall;
6. Reside as approved by your Youth Probation Officer and not change that residence without the prior written permission of your Youth Probation Officer;
7. For the first month of this order, you will remain in your residence on house arrest except with the prior written permission of your Youth Probation Officer or except in the actual presence of a responsible adult approved in advance by your Youth Probation Officer. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;

8. For the remaining month, the second month, you will be on a condition to abide by a curfew between the hours of 10:00 p.m. and 6:00 a.m. except with the prior written permission of the Youth Probation Officer or, again, except in the actual presence of a responsible adult approved in advance by the Youth Probation Officer. And again, you must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;

I will add that there be an exception for employment or education, but that that be approved in advance by your Youth Probation Officer. In other words, if you have gainful employment and your work hours are 9:00 a.m. to 5:00 p.m. and you speak to Mr. Marshall, he approves that, and that will be an exception.

9. Not possess or consume alcohol and/or illegal drugs that have not been prescribed for you by a medical doctor;
10. Attend and actively participate in all assessment and counselling programs as directed by your Youth Probation Officer and complete them to the satisfaction of the officer for the following issues: substance abuse and any other issues identified by the Youth Probation Officer, and provide consents to release information to the Youth Probation Officer regarding your participation in any program that you have been directed to do pursuant to this condition;

11. Not have contact, directly or indirectly, or communication in any way with K.F. or with H.O.-W. except with the prior written permission of your Youth Probation Officer in consultation with Victim Services;
12. Remain 100 metres away from any known place of residence, employment or education of those two individuals, again with the same exceptions as in the above clause;
13. Make compensation by paying in court the amount of \$80 in trust for K.F. within seven days;
14. With respect to education, attend school or any other place of learning, training or recreation as directed by your Youth Probation Officer and provide him with consents to release information in relation to your participation in any programs you have been directed to do pursuant to this condition; and
15. Make reasonable efforts to find and maintain suitable employment and provide your Youth Probation Officer with all necessary detail concerning your efforts.

[17] Following that, there will be a period of probation for 12 months.

[18] In that order, M.S.H.-P., you will perform 40 hours of community service as directed by your Youth Probation Officer or such other person as that officer may designate. It is to be completed within the first six months of the probation period. Any

hours spent in programming may be applied to your community service at the discretion of your Youth Probation Officer.

[19] The other conditions that will attach — and I am not going to read them again, but there will be the no contact and not attend clause. Those two clauses will be the same as on the order that I have just read to you, as well as the residence and programming clauses.

[20] I have considered whether or not a firearms prohibition is necessary and I have decided that it is unnecessary, based on the fact that you are a first-time offender and that no weapons were used in committing these offences.

[21] I am obliged to impose the DNA order that has been mentioned. You are to provide suitable samples of your bodily substances for the purpose of DNA analysis and recording.

[DISCUSSIONS]

[22] The condition to report to your Youth Probation Officer today, and thereafter as directed by the Youth Probation Officer, is to be added to the probation order.

CHISHOLM C.J.T.C.