

Citation: *R. v. A.C.S*, 2008 YKYC 8

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Registry: Whitehorse

IN THE YOUTH JUSTICE COURT OF YUKON

Before: His Honour Judge Overend

REGINA

v.

A.C.S.

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

Appearances:
Samantha Oruski
Emily Hill

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] OVEREND T.C.J. (Oral): I said before we stood down that this is a difficult case, in part because of the seriousness of the offence but mostly because of the difficulty in trying to do something that will assist this youth in becoming rehabilitated and reintegrated into the society in which he will be living for many years.

[2] The offences here today to which he has entered pleas of guilty are in the first Information "that on the 12th of May, 2007, at or near Whitehorse, he did unlawfully commit an offence in that he did commit mischief by interfering with the lawful enjoyment of property, to wit: the property of Pala Management Corp".

[3] The second Information: Between the 18th of May, 2007, and the 19th of May, 2007, at Whitehorse, he committed an offence in that, while subject to an intensive support and supervision order made in the Youth Justice Court for the Yukon Territory in Whitehorse, Yukon, wilfully failed to comply with a condition of that order, to wit: for the first six months obey a curfew between the hours of 10:00 p.m. and 7:00 a.m. seven days a week.

[4] The last Information 03519B contains the most serious of the charges, that on or about the 5th of June, 2007, at Whitehorse, Yukon Territory, he did unlawfully commit an offence in that he did endanger the life of Joshua Henry Johns, thereby committing an aggravated assault.

[5] In that same Information, he has pled guilty to three more offences, mischief by wilfully damaging the mobile home of Brent Schultz and being subject to a probation order, wilfully failing to comply with the order to keep the peace and be of good behaviour, and finally, being a person subject to an intensive support and supervision order, failing to abstain absolutely from the possession or consumption of alcohol.

[6] The Crown has read in the circumstances of all of these offences. I accept those circumstances as read in by the Crown and having been accepted by the youth. I find those circumstances as read in as facts upon which I am making my decision. I do not

intend to repeat in detail those facts but I will refer to some of them throughout my Reasons.

[7] A. is a youth with a chaotic and tragic history, a sad upbringing. He was assaulted by his father at the age of six. His dad committed suicide while awaiting trial for that assault. His mother is an alcoholic. At age nine he was taken into care and became a permanent ward at the age of 11. He was using drugs before he was a teenager, including cocaine, ecstasy and acid.

[8] He has a history of aggressive behaviour starting from grade one.

[9] He has been convicted of a sexual assault in June of 2006, and, significantly for my decision, of an assault with a weapon less than a month prior to the offence of aggravated assault committed by him on the 5th of June of this year, and set out in Information 03519B.

[10] To date he has not responded well to treatment, being of the view that he is able to deal with his substance abuse in his own way. Until arrest he continued to abuse alcohol. He presents with a severe alcohol addiction.

[11] With respect to his sexual offence history, he is seen as untreated, not having responded to treatment programs.

[12] Early probation reports describe him as a good kid, but laterally he is seen as being narcissistic and manipulative, and one whose words are not supported by his actions.

[13] He meets the criteria for conduct disorder. He is assessed as being a high risk to reoffend. Dr. Constance's report says that despite court-imposed sanctions "including probation and an ISSP worker as well as enrolment in a sex offender treatment program, [he] has made no progress...".

[14] It is clear that he lacks any familial support and has indicated a lack of interest in his First Nations heritage. This is a young man for whom the road to rehabilitation and reintegration will be long and bumpy. He requires much more than the willingness to change. I am satisfied that at present he fails to recognize his potential for serious harm to himself and others. He needs massive and ongoing support and services.

[15] The *Youth Criminal Justice Act* sets out the principles by which I must be guided. They are set out in s. 3. I do not intend to read them into the record here. I am aware of the provisions of s. 3, but I will refer in detail to s. 38. Section 38 of the *Youth Criminal Justice Act* says:

The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

(2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

I am not going to delineate them all but I will refer to the ones that are important here, or the ones that are most important here.

38 (2)(c) The sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;

Clearly in this case aggravated assault is a very serious offence. The victim of this offence suffered a significant wound from which he has, somewhat surprisingly, recovered. He had 50 stitches to his face, most of them to the interior, but still being attacked and struck twice with a shovel obviously created some significant physical damage. The psychological damage which may have been caused may not have yet been discovered and resolved.

[16] Section 38(2)(d):

all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons with particular attention to the circumstances of aboriginal young persons;

It is clear here that a non-custodial sentence is not appropriate. His counsel concedes that a sentence of custody is the appropriate response in this case, having in mind his history of two previous violent offences.

[17] Subsection 38(2)(e) says:

subject to paragraph (c) the sentence must

- (i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),

- (ii) be the one that is most likely to rehabilitate the young person and reintegrate him into society, and
- (iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to the victims and the community.

[18] Section 38(3) says:

In determining a youth sentence, the youth justice court shall take into account

- (a) the degree of participation by the young person in the commission of the offence;

Clearly here, A. was the principal in this offence.

- (b) the harm done to the victims, and whether it was intentional or reasonably foreseeable;

Clearly, whether or not he was in an alcoholic stupor does not excuse the behaviour and in that sense he intentionally struck this victim with the shovel on two occasions.

- (c) any reparation made by the young person to the victim or the community;

Well clearly, none has been made but there has been no opportunity to make any because A. has been in custody since these offences.

- (d) the time spent in detention by the young person as a result of the offence;

I will consider in my sentence the four months he has spent in custody awaiting his disposition. It is slightly more than four months.

(e) the previous findings of guilt of the young person.

I have alluded to that already. He has two previous convictions for violent offences.

Has there been a determination if those were serious violent offences?

[19] MS. ORUSKI: No.

[20] THE COURT: All right. So they were just violent offences.

[21] MS. ORUSKI: Yes.

[22] THE COURT: All right. Thank you.

[23] I have to consider any other aggravating or mitigating circumstances. The mitigating circumstances here are in fact his early guilty plea. While a plea on the record shows it was not made when he was first arrested, I am satisfied he clearly indicated his wish to enter a guilty plea at an early stage. Because of the seriousness of the offence that plea was quite properly delayed until he had the benefit of counsel. Having had the benefit of counsel he maintains his guilty plea and he has done that at the earliest reasonable date.

[24] The offence was not premeditated, that is, he did not go to the house with a shovel with the intent of harming Joshua Johns.

[25] He has expressed some remorse. I take that expression of remorse somewhat in light of the fact that it is easy for him to express remorse. I question whether or not there is much behind that expression of remorse.

[26] Although he remains untreated and programming has not been successful, he at least has gone through the motions of participating in psychological assessments.

[27] I think I have basically covered the areas I wished to cover before deciding what the appropriate sentence should be. As I indicated already, he has spent better than four months in custody. The Crown suggests that 18 months closed custody is called for, for this offence and this offender.

[28] A.'s counsel has suggested that while she agrees that custody is the required disposition, has said that that is excessive in the circumstances, and that an open custody disposition of something less than suggested by the Crown would be appropriate. The Crown has not overlooked the fact that he has been in custody and has suggested, if I take that pre-trial custody into account, that a 12-month disposition would be appropriate.

[29] I agree with the Crown. I agree that it should be a 12-month, eight months in custody and four months community supervision.

[30] With respect to whether it should be open or closed, I again agree with the Crown. I am satisfied that, as an untreated substance abuse user, he is at a high risk to reoffend. He says that he would like to change and I do not have any doubt of his sincerity, as he expresses it today when sober, but I have no confidence that without

significant treatment and massive support, he will be able to overcome the difficulties that he has lived with since a very young child. He will be a high risk to the community as long as he remains untreated. The kind of treatment that is available in closed custody is the only kind of treatment that will assist this young man.

[31] After the period of closed custody and community supervision, I am going to put him on an intensive support and supervision order. That will be for a further period of eight months. He is to:

1. Keep the peace and be of good behaviour;
2. Appear before the Youth Justice Court when required by the Court to do so;
3. Report to a youth worker immediately and thereafter as often as required and in the manner directed by the youth worker, that is, immediately upon the expiration of his community supervision order, he is to report;
4. Reside as approved by the youth worker, abide by the rules of that residence and not change his residence without the prior written approval of the youth worker;
5. For the first three months of the intensive support and supervision order to be in his residence between the hours of 10:00 p.m. and 7:00 a.m., seven days a week. During these hours he must be continuously in his residence unless specific permission has been received from the youth worker to be outside the residence during those hours;
6. Carry any permission required by this Order with him at all times.

7. Answer the door or the telephone during reasonable hours for curfew checks.
8. Abstain absolutely from possession or consumption of alcohol and the non-medical use of drugs except for the use of drugs prescribed by a qualified medical practitioner.
9. Take alcohol, drug or substance abuse assessment and counselling as directed by the youth worker.
10. Take psychological assessment and counselling as directed by the youth worker.
11. Take anger management, assessment and counselling as directed by the youth worker.

[32] There will be a DNA order.

[33] He is prohibited from possessing any firearms --I think the prohibition of the *Youth Justice Act* is two years, isn't it

[34] MS. HILL: Two years.

[35] THE COURT: Yes, two years.

[36] The reports will be released to the youth probation officer. There will not be any excising of any part of that. I am satisfied that the complete background is important for the youth worker to understand this young man and to try to assist him to be reintegrated. It will also go to, sorry, I forgot the name --

[37] MS. HILL: Family and Children's Services.

[38] THE COURT: Family and Children's Services. Thank you.

[39] MS. HILL: Does that also allow them to go to the custody facility?

[40] THE COURT: Oh, yes, and the custody facility, yes. Thank you. I knew there was one more. Have I covered everything now, Ms. Hill? Anything else?

[41] MS. HILL: No, no. No questions.

[42] MS. ORUSKI: Serious violent offence designation?

[43] THE COURT: Oh yes, and I am satisfied, but also by consent, this is a serious violent offence. It will be recorded on the record as such.

[44] With respect to the other offences, on each of the other offences, I am sentencing him to a term of closed custody of one month concurrent to Count 1 in Information 03519B and to each other.

[45] MS. ORUSKI: I will direct a stay of proceedings on all outstanding matters.

[46] THE COURT: A., you are at a crossroads. I know you are listening carefully today, and you have the ability to overcome this, but it is going to be very hard for you. You are going to stumble a few times, but it is very important to keep trying, because you do not want to spend the next 50 years of your life as a victim of alcohol abuse.

[47] THE CLERK: Any victim surcharges?

[48] THE COURT: No surcharges.

OVEREND T.C.J.