

Citation: *R. v. R.P.L.*, 2013 YKYC 2

Date: 20120907
Docket: 12-03551A
12-03554
12-03560
12-03563
12-03564
12-03566
12-03568A
Registry: Whitehorse

IN THE YOUTH JUSTICE COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

R.P.L.

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

Appearances:
Joanna Phillips
Kim Hawkins
Pamela Adamson

Counsel for the Crown
Counsel for the Defence
Program Support Worker

REASONS FOR SENTENCING

[1] COZENS C.J.T.C (Oral): R.L. has entered guilty pleas to having committed 13 offences between July 7 and August 20, 2012. The offences include one offence under s. 266, five offences under s. 137 of the *Youth Criminal Justice Act*, four offences under s. 145(3), one offence under s. 348 (1)(b), and two offences under 354 (1)(a).

[2] The significant underlying circumstances are that at the time she committed

these offences, Ms. L. was on an 18 month probation order that was imposed on her on May 31, 2012, with a number of terms. This order came out of numerous convictions for break and enters, failures to comply with undertakings, and theft charges.

[3] I will say at the outset that the submission on disposition between the parties is pretty much consistent. I would not call it a classic joint submission, but Crown and defence have worked out a resolution that is pretty similar. One of the issues raised was the availability of custody. There is no question that it is available on the s. 266 charge. It is more difficult with respect to some of the other charges, but I am satisfied in the circumstances that s. 39 (1)(c) applies, and with respect to the property offences and the break and enter offence, clearly in conjunction with the other offences for which Ms. L. was sentenced on May 31st, there is a pattern of findings of guilt in the similarity of the offences, and I am familiar with and counsel have provided me with *R. v. S.A.C.*, [2008] 2 S.C.R. 675, 2008 SCC 47, that speaks to the issue of “a pattern of findings of guilt”. So while my decision in this is not after a thorough study, I think that the application of *S.A.C.*, *supra*, to s. 39 (1)(c), in the circumstances of this offender, and notwithstanding there has only been one prior date at which findings of guilt were made, it involved charges arising in several different circumstances and thus her history falls within a pattern of findings of guilt. Counsel are agreed on that for the purposes of this disposition.

[4] The circumstances which I will go through briefly are that on July 7, 2012, again while on probation, Ms. L. was involved in an incident at the skateboard park. Another individual, who had tried to break up a fight and had been punched in the face, walked by Ms. L., who was with a third individual, and Ms. L. grabbed Ms. G.E. and pulled her

to the ground, at which point in time the co-accused began to punch and kick her.

Ms. L.'s role in the assault as put forward by the Crown was more minor.

[5] On July 26, 2012, Ms. L. was found by the RCMP outside of her curfew hours under the influence of alcohol. On July 31, 2012, she was released from custody, after five days, on an undertaking to a Justice of the Peace that required her to have no contact with O.K. and be under a condition of house arrest, but on August 5th through August 7th she was outside of her residence outside of the house arrest hours, and on August 6th, she did not report as directed on the undertaking to her bail supervisor. Then, on August 8, 2012, Ms. L., in the company of her co-accused, Ms. K., observed an individual handling cash at the Klondike Rib and Salmon and subsequently entered through the back door, went up to the office where they had observed the cash, broke through the office door, gained entry through force into the office, went up and took somewhere in the area of \$4,045 in cash. That was subsequently spent by the two of them.

[6] On August 14, 2012, Ms. L. was arrested outside of her curfew hours in possession of a stolen vehicle exceeding \$5,000 that belonged to a 78-year-old woman, who, as a result of the theft, lost a new cane she had purchased, a disabled sticker and some CDs. Ms. L. was in the company of Ms. K. at this time, and this resulted in the three further breaches of her probation order, outside of her curfew, in contact with Ms. K., and not to be in a motor vehicle without an adult being present.

[7] On August 20, 2012, she was located by the RCMP, outside of her residence, outside the hours of her house arrest and in contact with Ms. K., which was a breach of

her recognizance as well, and thus two more charges under 145(3). At that point in time, Ms. L. was also noted to be in possession of a key from the Macaulay Lodge, which had been broken into earlier and had items stolen from it, thus she was in possession of stolen property. Macaulay Lodge had lost other items but the keys certainly were one factor. As a result of the loss of the keys, there were additional expenses to the Macaulay Lodge as they had to hire additional security officers and get all the locks changed.

[8] Ms. L. has been in custody a total of 25 days, five of which she was out on compassionate leave as her father had a very serious medical emergency. In some respects, the timing of her father's medical emergency and her detention in custody may have had more of an impact on her than her previous dealings with this court.

[9] There was a very comprehensive Pre-Sentence Report prepared for Ms. L. that I had reviewed in relation to the prior offences for which I sentenced her in May of this year. It is clear that Ms. L., with her Aboriginal ancestry, has certainly struggled, with her extended family, through some of the negative and harmful effects that all too often have been visited on individuals of Aboriginal ancestry in Canada through governmental actions and other systemic failures. While Ms. L. herself does not, to my knowledge, suffer from Fetal Alcohol Spectrum Disorder, which is unfortunately prevalent in this community, and is obviously a very intelligent, capable young lady, there is no question that still the negative impacts of her Aboriginal heritage have caused disruption in her extended family and thus in her own life and in her community as well. So I keep that in mind. Her mother and father have struggled. She has almost lost both of them, but she has a very supportive family that is generally present in court. Her mother was present

today; her father remains in the hospital in Alberta recovering from a near-death experience. Ms. L. has almost lost both her parents and it is to be hoped that both her parents do not one day lose her or that she does not become a parent whose children one day risk losing her. Now, her father has a medical condition; her mother was almost lost through her own difficulties in dealing with the issues in her life, but Ms. L. should be thankful that she has a loving and supportive family with her and I hope that she appreciates that and is able to use that in future.

[10] There are many positive things that I can say about Ms. L., but the reality is she has the ability to live a meaningful and productive pro-social life and she has the support to do it. The hope is that she takes advantage of both and commits herself to it and does well. There is no question that her cousin is a very negative influence on her, but I think Ms. L. has accepted responsibility for her own actions and has not blamed her cousin for them, which is wise, because it is not her cousin's fault. Ms. L. makes the choices to go along or not. It is my hope that she makes better choices in the future.

[11] I will not go into the counselling and other issues and supports that Ms. L. has taken advantage of.

[12] I believe that the disposition proposed by Crown counsel and essentially concurred in by defence counsel, with some concerns about a duplicate probation order, are appropriate.

[13] The sentence will be as follows. For the s. 266 offence on July 7, 2012, there will be an order of 30 days deferred custody. I will say at the outset that I have reviewed recent case law on the issue of deferred custody, including *R. v. K.*, 2012

YKYC 3 and 2012 YKYC 4, to ensure myself of the appropriateness of deferred custody for these charges for this individual. I know that custody and all alternatives to custody, even deferred custody, are to be considered, but having been very aware of the limitations in custody as I canvassed in that case, I am satisfied here that custody is required, but it will be the most minimal form of custody that can be imposed. That will explain the custodial dispositions that I am imposing in this case. I am aware of the 25 days in pre-trial custody but there is no credit being given for it.

[14] With respect to the July 26, 2012 s. 137 charges, there will be a period of probation of 12 months. With respect to the 145(3) charges from August 5 to August 8 and August 6, 2012, there will be the same probation order of 12 months. With respect to the s. 348 (1)(b) from August 8, 2012, there will be a 90 day deferred custody order consecutive to the s. 266. With respect to the s. 354 (1)(a) from August 14, 2012, there will be a 60 day deferred custody, consecutive to the 30 days and the 90 days on the other offences. With respect to the s. 137 offences from that date, there will be the probation order. With respect to the August 20, 2012, s. 354 (1)(a), there will be 30 days consecutive, deferred custody, and with respect to the s. 145(3) charges from that date, there will be a probation order. The probation order will also attach to the s. 266, the s. 348 (1)(b), the s. 354(1)(a), and the other 354(1)(a). So in all charges, the probation order will apply. It will be 12 months. It will run at the same time as the other probation order.

[15] Now, with respect to the deferred custody order, the terms are to be the same.

The statutory terms will be that you are:

1. Required to keep the peace and be of good behaviour;
2. Appear before the Youth Justice Court when required by the Court to do so;
3. You are to report to a youth worker immediately upon release and be under the supervision of the youth worker or a person designated by the youth worker;
4. You are to inform the youth worker immediately upon being arrested or questioned by the police;
5. You are to report to the police or any named individual as instructed by your youth worker;
6. You are to advise the youth worker of your address of residence and report immediately to the youth worker if there is any change in:
 - (a) that address;
 - (b) in your normal occupation including employment, vocation or educational training and volunteer work;
 - (c) in your family or financial situation, and;
 - (d) that which may reasonably be expected to affect your ability to comply with the conditions of the sentence;
7. You are to not own, possess, or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, accept as authorized in writing by the youth worker for the

- purpose of participating in a program specified in the authorization;
8. You are to attend school or any other place of learning, training, or recreation that is appropriate as directed by your youth worker;
 9. You are to reside as directed by your youth worker and not change that residence without the prior written permission of your youth worker;
 10. You are to remain in the Yukon Territory, except with the prior written permission of your youth worker;
 11. You are to complete 10 hours of community work service at least 10 days prior to the conclusion of each deferred custody sentence;

So if it is 90 days you have to have it done by 80 days, 60 by 50, 30 by 20. I am going to include that - because you need to recognize you still have 210 hours of community work service on your original probation order - I am going to include that:

12. Any hours spent in assessment programming or counselling may, at the discretion of the youth worker, be counted as community work service hours;

Now, whether they get counted as probation hours or deferred custody, I would think that deferred custody would be the priority, that with respect to this probation order of 18 months' time, has no dates.

[16] With respect to participation in supporting or recreational activities, that is not to apply to the deferred custody. That will apply to the existing probation order. It still means you will get credit; you will get credit somewhere else. Are there any other terms on the deferred custody order? Are there curfew terms required on this?

[17] MS. PHILLIPS: Yes. I was going to ask for a curfew, the same that she is currently on. I do not want to complicate things further.

[18] THE COURT: Neither do I.

13. You shall abide by a curfew by remaining within your place of residence between the hours of 8:00 p.m. and 7:00 a.m. daily, except when in the immediate company of an adult approved in advance in writing by a youth worker or otherwise with the permission of your youth worker. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;

[DISCUSSION RE GENERAL PERMISSION EXCEPTION TO CURFEW, PROBATION ORDERS, AND COUNSELLING CONDITIONS]

There will be a clause that you:

14. Are to abstain absolutely from the possession and consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
15. You are to attend for any assessment, counselling or programming as directed by your youth worker;
16. You are to have no contact, directly or indirectly, or communication in any way with O.K., except as permitted by your youth worker;

17. You are to have no contact, directly or indirectly, or communication in any way with Donna Novecosky, except for the purposes of Victim Offender Reconciliation or as otherwise directed by your youth worker;
18. You are to have no contact or communication in any way with W.R., except with the prior written permission of your youth worker;
19. You are to not attend at Klondike Rib and Salmon unless with the permission of your youth worker.

Those are on the deferred custody orders, right?

[19] MS. PHILLIPS: Yeah.

[20] THE COURT: That pretty much covers those. Ms. Adamson, anything you can think of?

[21] MS. ADAMSON: Okay [indiscernible].

[22] THE COURT: Okay. A period of probation to follow will include the following terms. Terms 1 to 3 will be the same:

1. You are to keep the peace and be of good behaviour;
2. Appear before the Youth Justice Court while required by the Court to do so;
3. You are to report within two working days of the completion of your deferred custody sentences to a youth worker and thereafter, when and in the manner directed by the youth worker;

4. You are to reside as directed by your youth worker and abide by the rules of said residence. Do not change your residence without the prior, written permission of your youth worker;
5. You are to abide by a curfew by remaining within your place of residence between the hours of 8:00 p.m. and 7:00 a.m. daily, except when in the immediate company of an adult approved in advance in writing by a youth worker or otherwise with the permission of your youth worker;
6. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of the condition;
7. You are to abstain absolutely from the possession and consumption of alcohol and controlled drugs and substances, except in accordance with a prescription given to you by a qualified medical practitioner;
8. You are to attend for any assessment, counselling or programming as directed by your youth worker.
9. You are to have no contact directly or indirectly in any way with O.K. unless in the immediate company of an adult approved in advance in writing by your youth worker or as otherwise permitted in writing by your youth worker;
10. You are to have no contact directly or indirectly in any way with W.R. unless in the immediate company of an adult approved in advance in writing by your youth worker or as otherwise permitted in writing by your youth worker;

11. You are to have no contact or communication directly or indirectly in any way with Donna Novecosky, except for the purposes of Victim Offender Reconciliation as directed by your youth worker or as otherwise directed by your youth worker;
12. You are to participate in a Victim Offender Reconciliation process as directed by a youth worker;

Now, this existing probation order carries through but this order now, does not come into effect until afterwards. Do I have a Victim Offender Reconciliation term in the deferred custody order? I do not think I had that term, did I?

[23] MS. PHILLIPS: No, you did not.

[24] THE COURT: I think the deferred custody order should also include a term that:

20. You are to participate in a Victim Offender Reconciliation process as directed by your youth worker.

That will also be in this probation order. It is a different victim, so it would not make sense to include it under the other order. I expect it to cover Donna Novecosky in this order.

13. You are to attend school or other places of learning, training or recreation that is appropriate as directed by your youth worker;

14. You are to provide your youth worker with consents to release information with regard to your participation in any assessment programming, counselling, educational or recreational activities you have been directed to participate in and pursuant to this activity;

[DISCUSSION RE PROBATION ORDER CLAUSES]

15. Not operate a motor vehicle on any street, road, highway or other public place;
16. Not attend at Klondike Rib and Salmon at 2114 2nd Avenue, Whitehorse, Yukon Territory, without the prior written permission of your youth worker;
17. You are not to be found in a motor vehicle except if in the immediate presence of an adult or except with the prior written permission of your youth worker;
18. You are to carry with you at all times any written permissions granted to you under this order for any purpose if you are exercising a permission exception on one of the terms of this order;
19. You are to attend for review of your performance under this order in the Youth Justice Court as and when required upon an application for review made by yourself, a parent, the Attorney General, or your youth worker.

[DISCUSSION RE COMMUNITY WORK SERVICE ON PROBATION ORDER]

20. You are to perform 10 hours of community work service per month --

Okay. That is a lot of community work service you have got coming up, but you know, I will be frank. Community work service is not a punishment on a probation order; it is a way to make -- to say you are sorry, it is a way to prove you are sorry by giving something back to your community. It is also a way for you to start to engage in pro-social activities that you might actually find, you know what, I actually like helping people out more than I like hanging around with my cousin and other people and doing things that are hurting people. So it actually gives you a chance to acquire and learn skills, and take counselling and participate in sports that might give you a reason to make the right choices when you are trying to decide. So it is not punishment. More community work service hours just gives you more chances to be involved in things that might help you get a better direction in your life. So do not look it as, "Oh my god, I have all these hours." These hours are a way for you to actually get higher. They are like ladders, helping you climb out of the little hole you have created for yourself now, and that if you do not change, will become a huge hole in your life.

20. You are to perform 10 hours of community work service per month as directed by your youth worker. Any participation in sporting or recreational activities or in assessment, programming or counselling, may, at the discretion of your youth worker, be counted as community work service hours. You may be excused from your responsibility to complete these hours each month at the discretion of your youth worker;

Bottom line. And because it is each month, well, she gets rid of 10 this month, you still have 10 the next month. It is going to be on a monthly basis and it depends on how

you are doing, but if you are not doing something that is so important that you cannot do them, you can be expected to be doing them.

[DISCUSSION RE EXISTING PROBATION CURFEW ORDER
AMENDMENTS]

[25] Clause four of that order, the curfew clause is simply going to be changed to add --

[26] THE CLERK: "...or otherwise with the permission of your youth worker."

[27] THE COURT: Thank you. And that amendment will be made, and you will get a copy of that order. There is no victim fine surcharge on any of these; it is a youth. I am not going to make the DNA order on the s. 266 and I am not going to make a weapons order on the s. 266 charge.

[28] I am not going to order restitution and I will say that it is with some reluctance. The law is very clear. There has to be a realistic possibility of making restitution, but I still struggle with the idea of not making youth accountable in some way, to someone, who they have harmed financially. It is clear from the Victim Impact Statement filed there was a harm, and the victim of the Klondike Rib and Salmon was here in court today and she was here in court yesterday. It is clear that what you did harmed her business. I cannot account for extra money she claimed, but certainly the \$4,045 she said she lost in actual cash, that is money this business which employs Yukoners lost, and they work hard for that money. While I am not going to order you to make

restitution because I do not think in law I can do that because you have no employment or no way to reasonably make the payment, you really need to think hard about the loss you caused that company. I am not sure what the actual financial loss to the woman was that lost her cane.

[29] MS. PHILLIPS: 40 dollars.

[30] THE COURT: 40 dollars. Nothing stops you from voluntarily showing you are sorry by trying to make any financial contributions you can. I am not ordering it because I do not think in law I can order it for you, but it is something to think about and that is one reason why I have included the except with permissions with respect to attendance at Klondike Rib and Salmon and in the other. It may be that, not right away, but in time you may find yourself in a position where you want to do something to help pay that company back. You may not be able to do it in money but you may be able to do some community work service for them or washing dishes and you might need permission to be there to do that and that can come out of a Victim Offender Reconciliation process. Just because your matter is over for today in front of me and will one day be over with respect to the probation orders, for the victims of offences, it is not over that quickly sometimes.

[31] That is everything I think that I need to say, can say. The remaining charges will be stayed, I assume?

[32] MS. PHILLIPS: Stayed against Ms. L.

[33] THE COURT: Yes. Not against Ms. K. or Ms. R., but only the charges with respect to which Ms. L. to which guilty pleas have not been entered, they will be stayed.

[34] MS. PHILLIPS: Thank you.

COZENS C.J.T.C