

Citation: *R. v. A.P.L.*, 2009 YKYC 6

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Docket: 09-03519B
09-03537
09-03574
Registry: Whitehorse

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

REGINA

v.

A.P.L.

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

Appearances:
Melissa Atkinson
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. L. has pled guilty to one count under s. 137, one count under s. 267(a), and one count under s. 87.

[2] The facts on the s. 137 are that on June 17th of this year, in Old Crow, Mr. L. was subject to probation with a number of conditions including a no-contact condition. He had been placed on this probation from May 26th. He was in breach of his no-contact condition by having contact with one Donovan Frost on the 17th of June.

[3] He remained subject to that probation on June 27th in Old Crow when Mr. L. was

involved in shooting a sling-shot at two other younger individuals in town. He was shooting it at their legs and their ankles. Earlier than the date of the 27th, he had been warned about sling-shot use as, I guess, he had been utilizing it a little bit earlier. He had received a warning; he was then charged on the 27th with this involvement with these two youths.

[4] On October 31st in Old Crow, in the early morning hours, he was on an undertaking with the condition that he not possess any firearms or BB guns or weapons, et cetera, and the police were called out to a shooting that took place in town. Their investigation revealed that there had been three older people who had been partying at a house party. Three younger people, including Mr. L., showed up at the house party with some home brew and joined the party; however, the home brew, it turns out, was recognized by one of the older people as having coming from his place, so he had a confrontation with Mr. L. over this and he roughed him up a bit. This was Mr. Trevor Thomas.

[5] Mr. L. left with his two buddies; however, he did return a little bit later with a .22 rifle. He had indicated to his buddies he was going to back for some revenge. Again, he confronted Mr. Trevor Thomas, and was standing approximately six feet apart from him when the rifle discharged. No one was hit at that time; however, he made the motions to re-load, and in fact pointed it then at Mr. Thomas. Other individuals intervened and the gun was taken away from Mr. L. He fled the scene. He was arrested later at his home. He admitted to the police later that he did it in order to scare Mr. Thomas.

[6] He is a relatively young man, 15 years of age, with a limited prior record. He has one prior conviction for a property offence. He has some successful history with extra judicial sanctions and programs. We have Ms. Senft's report. It outlines some of his background. We have a letter of support, as well, from his mother. The bail supervision report raises the question of possibly some cognitive issues. He has been in custody since the October 31st incident; roughly 35 days by my calculations. The report also indicates that Mr. L. has been generally responding well to the structure of the young offender's facility. He has managed to show some noticeable improvement in behaviour and in self-control.

[7] I think Crown and defence are essentially in the same ball park. Firstly, the Crown was seeking a designation of serious violent offence for the s. 87 offence, and defence does not oppose that designation, and the Court certainly has no difficulty in making that designation. As such, I would designate that offence to be a serious violent offence.

[8] I would put on the record, as well, that it is the view of the Court that the s. 267 has significant elements in it of a serious violent offence as well, in that a sling-shot is capable certainly of some serious bodily harm.

[9] As I understand it, I think Crown and defence have agreed that there would be additional custody applied to Mr. L. and that that additional custody would be in the range of three months. There has been some discussion with regards to whether it should be open or whether it should be partially closed and followed by some open. The Court's view is that Mr. L., although he is doing well at YOF, I do not believe it is in

his best interest to spend anymore time in closed custody. I think he should be shown that there is light at the end of the tunnel and that his good behaviour perhaps is showing some reward.

[10] As such, I would propose to deal with it in this manner: For the s. 137, it would be one day deemed served. For the s. 267, I would indicate 45 days time served. That will be giving him more than one to one credit for his time in; perhaps not the full 1.5, but I think it is just a better number to deal with for the record purposes.

[11] For the s. 87, there is going to be a three-month period of open custody applied. So that means that you are going to be given a few freedoms. If you abuse them you are going to find you lose them all and you go back to YOF, but the open custody means that there will be a few more freedoms for you, as far as moving about. It is still jail. It is expected that you will do as you are required to do during that period of time.

[12] That is to be followed by a one-year probationary term. The terms and conditions of that probation will be as follows:

1. You are to keep the peace and be of good behaviour;
2. You are to report to your Probation Officer immediately upon your release, and thereafter as often and in the manner directed by your Probation Officer;
3. You are to reside as approved by your Probation Officer and abide by the rules of the residence that you are residing in;
4. You are to attend for such assessment, treatment and programming as may be directed by your Probation Officer;

5. You are also to attend for a forensic assessment as directed by your Probation Officer;
6. You are to have no contact, direct or indirect with Trevor Thomas --

That is for that period of one year.

-- except as allowed by the Probation Officer;

7. You are to attend and participate fully in a victim-offender reconciliation conference as may be directed by your Probation Officer; and
8. You are to absolutely abstain from the possession or consumption of alcohol and the non-prescription use of drugs, except for drugs that are prescribed to you by a qualified medical practitioner.

[13] Are there any of the conditions that you do not understand Mr. L.?

[14] MR. CHRISTIE: Yes, he understands.

[15] THE COURT: You understand all those conditions? Okay.

Pursuant to s. 51(1), there is a prohibition placed on you. It is for a period of two years. It prohibits you from possessing any firearms, cross-bows, prohibited weapons, restricted weapons, prohibited devices, ammunition, prohibited ammunition or explosive substances during the period specified in the order, which is two years.

[16] There is a requirement to consider DNA, I believe, because of the s. 267. The Court is of the view that Mr. L. should not be required at this time to produce his DNA.

[17] I think that has got it all covered. Anything missing, Crown?

[18] MS. ATKINSON: With respect to the - I'm just unsure; I was trying to get this information before I got here - regarding the s. 491 forfeiture order, as previously explained, I don't have that information about the - -

[19] THE COURT: The indications we have are that it is not his weapon.

[20] MS. ATKINSON: Yes.

[21] THE COURT: So I would not want to forfeit it at this time unless there was information indicating that whoever it did belong to loaned it to him for this purpose.

[22] MS. ATKINSON: All right.

[23] THE COURT: But, in fact, it was a weapon that was simply taken from a cache, if the owner can be found, it should be returned to the rightful owner.

[24] MS. ATKINSON: All right. With respect to the remaining current counts, the Crown directs a stay of proceedings. As well, just before we close this matter, my friend reminded me, because we already know these set circuit times if, Your Worship wished to name a specific date for probation review in 2010?

[25] THE COURT: I think that, initially at least, Mr. L. should be reviewed at each Old Crow circuit, starting the first one after his release. So the first circuit is when, Madam Clerk?

[26] MR. CHRISTIE: I think it's February 9th.

[27] THE CLERK: February 9th, Your Worship.

[28] THE COURT: February 9th?

[29] MR. CHRISTIE: That's if he's residing there. Obviously, that's as directed, I guess, with probation.

[30] THE COURT: Yes. But February 9th he may still be doing his three months. No, he gets a third of it off, does he not?

[31] MS. ATKINSON: Yes.

[32] THE COURT: He now gets a third of it off, so, no, he should be available for that. If in fact he is not in Old Crow for that period of time, he should make sure that his Probation Officer is aware, and he can certainly stand in as far as giving a report. February 9th will be the first check-in, then.

[33] MR. CHRISTIE: And I would as well, stay in touch.

[34] THE CLERK: Would that be a condition of the probation, Your Worship?

[35] THE COURT: Yes. A check-in for probation should occur at each circuit in Old Crow, unless otherwise directed by the judge.

CAMERON J.P.T.C.