

R. v. F.A.G , 2003 YKYC 3

IN THE YOUTH JUSTICE COURT OF YUKON
(Before His Honour Judge Faulkner)

IN THE MATTER OF THE *YOUTH CRIMINAL JUSTICE ACT*,
S.C. 2002, C. 1

REGINA

v.

F.A.G.

Kevin Drolet

Appearing for Crown

Gordon Coffin

Appearing for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): F. G. was convicted after trial on a charge of trafficking in a controlled drug. She sold a single marihuana cigarette to another youth, near the F.H. Collins School. Unfortunately, the cigarette ended up at the school.

[2] As has been pointed out by the Crown, s. 110(2) of the *Controlled Drugs and Substances Act*, 1996, c. 19, states that trafficking near a school is to be considered

an aggravating factor and, of course, I would consider it an aggravating factor even if no such provision was contained within the *Controlled Drugs and Substances Act*.

[3] The combined effect of that provision together with some of the precedents in sentencing considering that section, to put the matter briefly, suggest that a custodial sentence is indicated in most cases when a trafficking near a school is involved.

[4] However, the cases that I was referred to involve offenders who were youthful but were not subject to the provisions to the new *Youth Criminal Justice Act*, S.C. 2002, c. 1. Those offenders were, in fact, 18 years of age or older and, indeed, the cases were decided prior to the coming into force of the *Youth Criminal Justice Act*.

[5] The *Youth Criminal Justice Act* changes the landscape significantly with respect to persons who are subject to its provisions as Ms. F.G. is. Section 39 of the *Youth Criminal Justice Act*, essentially, directs the court to use imprisonment or custody as a last resort and further prohibit the placing of youth in custody unless certain pre-conditions apply. None of those pre-conditions apply in this case, except possibly, as Mr. Coffin conceded, the provision for the use of custody in what are called exceptional cases.

[6] In my view, this is not a case which could be described as exceptional given the fact that this is a 15 year-old girl who has no prior record and given the quantity of drug that was involved. Moreover, the pre-disposition report makes it clear that this is a young person who is not so much a criminal as a person in serious need of guidance and assistance as a result of her very chaotic and very unstructured upbringing.

[7] Ms. F.G., in fact, has been a ward of the Government and in the care of the Director of Family and Children's Services for some period of time.

[8] It must also be noted that she, herself, has drug abuse problems despite her rather tender years.

[9] The Crown is seeking a three-month open custody disposition to be followed by probation. I have not been persuaded that I could impose custody in this case having regard to the provision of s. 39 of the *Youth Criminal Justice Act*.

[10] I also consider as a relevant factor in determining whether this case is so exceptional as to warrant custody, that there has in fact been a period of custody involved in this case, in that Ms. F.G. was arrested following her failure to appear earlier, and now has been in custody, I gather, a total of some six days.

[11] The additional factor that is now present in this case which offers some hope of a better outcome for Ms. F.G., is the proposal to have her live with her aunt. I think, at this point, that represents the best of the available options.

[12] I am going to direct, with respect to this offence, that Ms. F.G. be subject to a probation order for a period of eight months.

[13] The terms of the probation will be:

- (1) That she will keep the peace and be of good behavior.
- (2) She will appear before the Youth Justice Court when required to do so.
- (3) She will report to a youth worker forthwith and thereafter as directed.

[14] She will reside with M.G. or at any other such residence as the youth

worker will direct.

[15] MR. COFFIN: Your Honour, we are going to change that to M.M.

[16] THE COURT: I am sorry, M.M.

- (5) She will obey all rules of her residence from time to time.
- (6) She will abide by a curfew by being in her place of residence between the hours of 10:00 p.m. and 7:00 a.m., unless permitted by the youth worker or his designate to keep other hours, or alternatively to be outside of her place of residence in the company of such person or persons as the youth worker will approve.
- (7) The probationer will present herself in person at the door in response to any curfew check by the police or the youth worker. Her failure to so present herself will be deemed to put her in breach of the curfew clause.
- (8) She will attend and participate in any assessment, treatment, or counselling, including a psychological assessment, if directed by the youth worker.
- (9) She will attend school or day programming as directed by the youth worker.
- (10) She will abstain from the possession or consumption of alcohol or controlled drugs or substances.
- (11) She will provide samples of breath or bodily substances on demand by a peace officer or a youth worker if either believes that the probationer has alcohol or controlled drugs or substances in her body contrary to the probation order.
- (12) She will not attend within 100 metres of F.H. Collins High School, unless

given leave to do so by F.H. Collins High School, or in the company of the youth worker or his designate.

- (13) She will attend a reconciliation conference with the F.H. Collins High School as directed by the youth worker, and she will participate in any recommendations from that conference.

FAULKNER T.C.J.